

EXHIBIT 1

ORDINANCE NO. 2014 - _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, ON BEHALF OF THE CITY, TO EXECUTE OPTIONS TO PURCHASE REAL PROPERTY GENERALLY LOCATED IN THE 100 BLOCK OF N. BONNIE BRAE ST., 2500 BLOCK OF W. HICKORY ST., AND 2300 BLOCK OF W. OAK ST., DENTON, DENTON COUNTY, TEXAS, FOR THE PUBLIC USE OF EXPANSION, CONSTRUCTION, MAINTENANCE, OPERATION, AND IMPROVEMENT OF ELECTRIC TRANSMISSION AND DISTRIBUTION LINES, FACILITIES, AND STRUCTURES, INCLUDING SUBSTATIONS; AUTHORIZING THE EXPENDITURE OF FUNDS; AND, PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Denton, Texas ("City") has approved plans for the construction of multiple electric transmission line and substation projects ("DME Expansion Projects");

WHEREAS, the City Council finds that the DME Expansion Projects serve the public interest of the citizens of the City by continuing to provide reliable electric service through electric utility infrastructure expansion and improvements;

WHEREAS, numerous real property interests need to be acquired by the City to construct the DME Expansion Projects;

WHEREAS, the City needs to purchase real property to relocate the current Hickory substation which is part of the DME Expansion Projects and has determined five suitable sites for its relocation;

WHEREAS, the City Council finds that financial best interests of the City will be served by securing options to purchase real property that may be necessary for the public use of expansion, construction, operation, maintenance, augmentation, and improvement of electric transmission and distribution lines, facilities, structures, and substations as required by the DME Expansion Projects; NOW, THEREFORE

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitations and findings contained in the preamble of this ordinance are incorporated by reference.

SECTION 2. The City Manager, or his designee, is authorized to (a) execute the Options to Purchase attached as Exhibits A, B, C, and D for real property located in the 100 block of N. Bonnie Brae St., 2500 block of W. Hickory St., and 2300 block of W. Oak St., Denton, Denton County, Texas; and (b) to make expenditures in accordance with the terms of the Options to Purchase.

SECTION 3. It is the intention of the City Council of the City of Denton, Texas, that if any phrase, sentence, section, or paragraph of this ordinance shall be declared unconstitutional or

otherwise invalid by final judgment of a court of competent jurisdiction such unconstitutionality or invalidity shall not affect any of the remainder of this ordinance since the same would have been enacted by the City Council without the incorporation of the unconstitutional or invalid phrase, sentence, section or paragraph.

SECTION 4. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2014.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY


By:  _____

Exhibit A

Option to Purchase

(102 Bonnie Brae St.)

Date: _____, 2014

Seller: John R. Lott, individually, and 102-8 BB, LLC, a series of Opal Estelle Holdings, LLC, a Texas limited liability company

Seller's Address: 14 E. Oakwood Hills Dr., Chandler, Arizona 85248

Buyer: City of Denton, Texas, a Texas home-rule municipal corporation

Buyer's Address: 215 E. McKinney St., Denton, Texas 76201

Property: All those certain lots, tracts or parcels of land lying and being situated in the City and County of Denton, State of Texas, and being Lot 5 of Oak Street Terrace, an Addition to the City of Denton, Denton County, Texas, according to the Plat thereof recorded in Volume 407, Page 562, Deed Records, Denton County, Texas. Also known as 102 Bonnie Brae Street.

Option Fee: \$2,000.00

Expiration Date: December 31, 2014

Contract: Contract of Sale attached as Exhibit A.

Purchase Price: \$117,750.00

Title Company: Title Resources

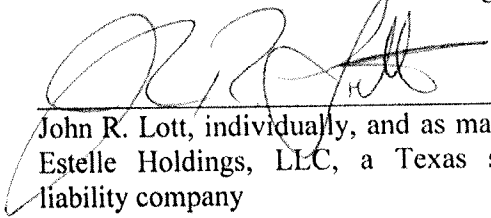
Title Company's Address: 525 S. Loop 288, Suite 125
Denton, Texas 76205

In consideration of the Option Fee, Seller grants to Buyer the exclusive and irrevocable option to purchase the Property on the following terms and conditions:

1. Application of Option Fee: The Option Fee will be applied to the Purchase Price.
2. Exercise of Option: To exercise the option, Buyer must execute and deliver to Seller the Contract by the Expiration Date. Within three business days of receiving Buyer's signed Contract, Seller must execute and deliver the Contract to Title Company.
3. Termination of Option: If Buyer does not exercise the option by the Expiration Date, the option terminates, Seller retains the Option Fee, and Buyer will execute and deliver to Seller a recordable release of the option.
4. Seller's Default: If Buyer exercises the option but Seller does not timely execute and deliver the Contract, Buyer has all applicable remedies, including specific performance.

5. Extension of Expiration Date: The Expiration Date may be extended by 60 days if Buyer pays Seller the amount of \$1,000.00 by the Expiration Date.

Optionor/Seller: John R. Lott, individually, and 102-8 BB, LLC, a series of Opal Estelle Holdings, LLC, a Texas limited liability company


John R. Lott, individually, and as manager of Opal Estelle Holdings, LLC, a Texas series limited liability company

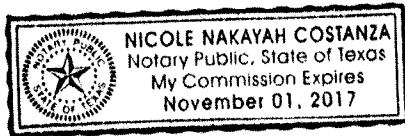
Optionee/Buyer: City of Denton, Texas

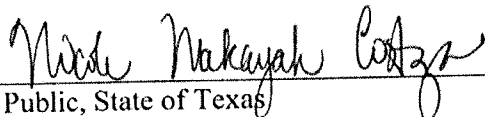
George Campbell, City Manager

Acknowledgments

State of Texas §
Denton County §

This instrument was acknowledged before me on August 28, 2014, by John R. Lott, individually, and as manager of Opal Estelle Holdings, LLC, a Texas series limited liability company, on behalf of Opal Estelle Holdings, LLC.





Notary Public, State of Texas

State of Texas §
Denton County §

This instrument was acknowledged before me on _____, 2014, by George Campbell, City Manager of the City of Denton, Texas, a Texas home-rule municipal corporation, on behalf of the City of Denton, Texas.

Notary Public, State of Texas

After recording, return to:
City of Denton - Real Estate Division
901A Texas St.
Denton, Texas 76210

EXHIBIT A TO OPTION AGREEMENT

CONTRACT OF SALE

NOTICE

YOU, AS OWNER OF THE PROPERTY (AS DEFINED BELOW), HAVE THE RIGHT TO: (1) DISCUSS ANY OFFER OR AGREEMENT REGARDING THE CITY OF DENTON'S ACQUISITION OF THE PROPERTY WITH OTHERS; OR (2) KEEP THE OFFER OR AGREEMENT CONFIDENTIAL, UNLESS THE OFFER OR AGREEMENT IS SUBJECT TO CHAPTER 552, GOVERNMENT CODE.

This Contract of Sale (the "Contract") is made this ____ day of _____, 2014, between Seller, JOHN R. LOTT, individually, and as manager of 102-8 BB, LLC, a series of OPAL ESTELLE HOLDINGS, LLC, a Texas series limited liability company, and Buyer, the City of Denton, Texas, a Texas home rule municipal corporation. The Effective Date of this Contract is the date of execution of the same by the Buyer.

RECITALS

WHEREAS, Seller owns that certain tract of land being more particularly described on Exhibit "A" attached, being located in Denton County, Texas (the "Land"); and

WHEREAS, Seller wants to sell to Buyer, and Buyer wants to buy from Seller, the Land, together with any and all rights or interests of Seller in and to adjacent streets, alleys and rights of way and together with all and singular the improvements and fixtures thereon and all other rights and appurtenances to the Land (collectively, the "Property").

ARTICLE I SALE OF PROPERTY

For the consideration set forth, and upon the terms, conditions and provisions contained, and subject to the reservations, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property.

Seller, subject to the limitation of such reservation made, shall reserve, for itself, its successors and assigns all oil, gas and other minerals in, on and under and that may be produced from the Property. Seller, its successors and assigns shall not have the right to use or access the surface of the Property, in any way, manner or form, in connection with or related to the reserved oil, gas, and other minerals and/or related to exploration and/or production of the oil, gas and other minerals reserved, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic

activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas and other minerals, and/or related to the exploration or production of same.

The term "minerals" shall include oil, gas and all associated hydrocarbons, and shall exclude (i) all substances (except oil, gas and all associated hydrocarbons) that any reasonable extraction, mining or other exploration and/or production method, operation, process or procedure would consume, deplete or destroy the surface of the Property; and (ii) all substances (except oil and gas) which are at or near the surface of the Property. The intent of the parties is that the meaning of the term "minerals" as utilized, shall be in accordance with that set forth in *Reed v. Wylie*, 597 S.W.2d 743 (Tex. 1980).

The term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

ARTICLE II

PURCHASE PRICE AND EARNEST MONEY

2.01 Purchase Price. The Purchase Price to be paid to Seller for the Property is the sum of ONE HUNDRED SEVENTEEN THOUSAND SEVEN HUNDRED FIFTY and NO/100 US Dollars (\$117,750.00) (the "Purchase Price").

2.02 Earnest Money. Buyer shall deposit the sum of Five Hundred and No/100 Dollars (\$500.00), as Earnest Money with Title Resources, LLC, 525 South Loop 288, Suite 125, Denton, Texas, 76205, ("Title Company"), as escrow agent, within seven (7) calendar days of the Effective Date. All interest earned thereon shall become part of the Earnest Money and shall be applied or disposed of in the same manner as the original Earnest Money deposit, as provided in this Contract. If the purchase contemplated is consummated in accordance with the terms and the provisions of this Contract, the Earnest Money, together with all interest earned thereon, shall be applied to the Purchase Price at Closing. In all other events, the Earnest Money, and the interest accrued thereon, shall be disposed of by the Title Company as provided in this Contract.

2.03 Independent Contract Consideration. Within seven (7) calendar days after the Effective Date, Buyer shall deliver to the Title Company, payable to and for the benefit of Seller, a check in the amount of One Hundred and No/100 Dollars (\$100.00) (the "Independent Contract Consideration"), which amount the parties acknowledge and agree has been bargained for and agreed to as consideration for Seller's execution and delivery of the Contract. The Independent Contract Consideration is in addition to, and independent of any other consideration or payment provided in this Contract, is non-refundable, and shall be retained by Seller notwithstanding any other provision of this Contract.

ARTICLE III
TITLE AND SURVEY

3.01 Title Commitment.

- (a) Within twenty (20) calendar days after the Effective Date, Seller shall cause to be furnished to Buyer a current Commitment for Title Insurance (the "Title Commitment") for the Property, issued by Title Company. The Title Commitment shall set forth the state of title to the Property, including a list of liens, mortgages, security interests, encumbrances, pledges, assignments, claims, charges, leases (surface, space, mineral, or otherwise), conditions, restrictions, options, severed mineral or royalty interests, conditional sales contracts, rights of first refusal, restrictive covenants, exceptions, easements (temporary or permanent), rights-of-way, encroachments, or any other outstanding claims, interests, estates or equities of any nature (each of which are referred to as an "Exception").
- (b) Along with the Title Commitment, Seller shall also cause to be delivered to Buyer, at Buyer's sole cost and expense, true and correct copies of all instruments that create or evidence Exceptions (the "Exception Documents"), including those described in the Title Commitment as exceptions to which the conveyance will be subject and/or which are required to be released or cured at or prior to Closing.

3.02 Survey. Within thirty (30) calendar days after the Effective Date, Seller shall cause to be prepared at Buyer's expense, a current on the ground survey of the Property (the "Survey"). The contents of the Survey shall be prepared by a surveyor selected by Buyer and shall include the matters prescribed by Buyer, which may include but not be limited to, a depiction of the location of all roads, streets, easements and rights of way, both on and adjoining the Property, water courses, 100 year flood plain, fences and improvements and structures of any kind. The Survey shall describe the size of the Property, in acres, and contain a metes and bounds description thereof. Seller shall furnish or cause to be furnished any affidavits, certificates, assurances, and/or resolutions as required by the Title Company in order to amend the survey exception as required by **Section 3.05** below. The description of the Property as set forth in the Survey, at the Buyer's election, shall be used to describe the Property in the deed to convey the Property to Buyer and shall be the description set forth in the Title Policy.

3.03 Review of Title Commitment, Survey and Exception Documents. Buyer shall have a period of ten (10) calendar days (the "Title Review Period") commencing with the day Buyer receives the last of the Title Commitment, the Survey, and the Exception Documents, in which to give written notice to Seller, specifying Buyer's objections to one or more of the items ("Objections"), if any. All items set forth in the Schedule C of the Title Commitment, and all other items set forth in the Title Commitment which are required to be released or otherwise satisfied at or prior to Closing, shall be deemed to be Objections without any action by Buyer.

3.04 Seller's Obligation to Cure; Buyer's Right to Terminate. The Seller shall, within ten (10) calendar days after Seller is provided notice of Objections, either satisfy the Objections at Seller's sole cost and expense or promptly notify Buyer in writing of the Objections that Seller cannot or will not satisfy at Seller's expense. Notwithstanding the foregoing sentence, Seller shall, in any event, be obligated to cure those Objections or Exceptions that have been voluntarily placed on or against the Property by Seller after the Effective Date. If Seller fails or refuses to satisfy any Objections that Seller is not obligated to cure within the allowed ten (10) calendar day period, then Buyer has the option of either:

- (a) waiving the unsatisfied Objections by, and only by, notice in writing to Seller prior to Closing, in which event those Objections shall become Permitted Exceptions, or
- (b) terminating this Contract by notice in writing prior to Closing and receiving back the Earnest Money, in which latter event Seller and Buyer shall have no further obligations, one to the other, with respect to the subject matter of this Contract.

3.05 Title Policy. At Closing, Seller, at Buyer's sole cost and expense, shall cause a standard Texas Owner's Policy of Title Insurance ("Title Policy") to be furnished to Buyer. The Title Policy shall be issued by the Title Company, in the amount of the Purchase Price and insuring that Buyer has indefeasible fee simple title to the Property, subject only to the Permitted Exceptions. The Title Policy may contain only the Permitted Exceptions and shall contain no other exceptions to title, with the standard printed or common exceptions amended or deleted as follows:

- (a) survey exception must be amended if required by Buyer to read "shortages in area" only (although Schedule C of the Title Commitment may condition amendment on the presentation of an acceptable survey and payment, to be borne solely by Buyer, of any required additional premium);
- (b) no exception will be permitted for "visible and apparent easements" or words to that effect (although reference may be made to any specific easement or use shown on the Survey, if a Permitted Exception);
- (c) no exception will be permitted for "rights of parties in possession";
- (d) no liens will be shown on Schedule B.

Notwithstanding the enumeration of the following exceptions, amendments and/or deletions, Buyer may object to any Exception it deems material, in its sole discretion.

ARTICLE IV
FEASIBILITY REVIEW PERIOD

4.01 Review Period. Any term or provision of this Contract notwithstanding, the obligations of Buyer specified in this Contract are wholly conditioned on Buyer's having determined, in Buyer's sole and absolute discretion, during the period commencing with the Effective Date of this Contract and ending sixty (60) calendar days thereafter (the "Absolute Review Period"), based on such tests, examinations, studies, investigations and inspections of the Property the Buyer deems necessary or desirable, including but not limited to studies or inspections to determine the existence of any environmental hazards or conditions, performed at Buyer's sole cost, that Buyer finds the Property suitable for Buyer's purposes. Buyer is granted the right to conduct engineering studies of the Property, and to conduct a physical inspection of the Property, including inspections that invade the surface and subsurface of the Property. If Buyer determines, in its sole judgment, that the Property is not suitable, for any reason, for Buyer's intended use or purpose, the Buyer may terminate this Contract by written notice to the Seller, as soon as reasonably practicable, but in any event prior to the expiration of the Absolute Review Period, in which case the Earnest Money will be returned to Buyer, and neither Buyer nor Seller shall have any further duties or obligations hereunder. In the event Buyer elects to terminate this Contract pursuant to the terms of this **Article IV, Section 4.01**, Buyer will provide to Seller copies of (i) any and all non-confidential and non-privileged reports and studies obtained by Buyer during the Absolute Review Period; and (ii) the Survey.

ARTICLE V
REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS

5.01 Representations and Warranties of Seller. To induce Buyer to enter into this Contract and consummate the sale and purchase of the Property in accordance with the terms and provisions herewith, Seller represents and warrants to Buyer as of the Effective Date and as of the Closing Date, except where specific reference is made to another date, that:

- (a) The descriptive information concerning the Property set forth in this Contract is complete, accurate, true and correct.
- (b) There are no adverse or other parties in possession of the Property or any part thereof, and no party has been granted any license, lease or other right related to the use or possession of the Property, or any part thereof, except those described in the Leases, as defined in **Article V, Section 5.02(a)**.
- (c) The Seller has good and marketable fee simple title to the Property, subject only to the Permitted Exceptions.
- (d) The Seller has the full right, power, and authority to sell and convey the Property as provided in this Contract and to carry out Seller's obligations hereunder.

- (e) The Seller has not received notice of, and has no other knowledge or information of, any pending or threatened judicial or administrative action, or any action pending or threatened by adjacent landowners or other persons against or affecting the Property.
- (f) The Seller has disclosed to Buyer in writing of any and all facts and circumstances relating to the physical condition of the Property that may materially and adversely affect the Property and operation or intended operation thereof, or any portion thereof, of which Seller has knowledge.
- (g) The Seller has paid all real estate and personal property taxes, assessments, excises, and levies that are presently due, if any, which are against or are related to the Property, or will be due as of the Closing, and the Property will be subject to no such liens.
- (h) The Seller shall convey the Property free and clear of all debts, liens and encumbrances.
- (i) Seller has not contracted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction or taken any action which would result in any real estate broker commissions or finder's fee or other fees payable to any other party with respect to the transactions contemplated by this Contract.
- (j) To the best of Seller's knowledge, there has not occurred the disposal or release of any Hazardous Substance to, on or from the Property.

As used in this Contract, "Hazardous Substance" means and includes all hazardous and toxic substances, waste or materials, chemicals, and any pollutant or contaminant, including without limitation, PCB's, asbestos, asbestos-containing material, petroleum products and raw materials, that are included under or regulated by any Environmental Law or that would or may pose a health, safety or environmental hazard.

As used in this Contract, "Environmental Law" means and includes all federal, state, and local statutes, ordinances, regulations and rules presently in force or hereafter enacted relating to environmental quality, contamination, and clean-up of Hazardous Substances, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), as amended, Toxic Substance Control Act, 15 U.S.C. 2601, et seq., and state superlien and environmental clean-up statutes and all rules and regulations presently or hereafter promulgated under or related to said statutes, as amended.

- (k) All Leases, as defined in **Article V, Section 5.02(a)**, shall have expired or otherwise terminated and any and all tenants or parties occupying the Property pursuant to the Leases shall have permanently abandoned and vacated the Property on or before the date of Closing.
- (l) The Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

5.02 Covenants and Agreements of Seller. Seller covenants and agrees with Buyer as follows:

- (a) Unless stated otherwise, within ten (10) calendar days after the Effective Date, Seller, at Seller's sole cost and expense, shall deliver to Buyer, with respect to the Property, true, correct, and complete copies of the following:
 - (i) All lease agreements and/or occupancy agreements and/or licenses of any kind or nature (if oral, Seller shall provide to Buyer in writing all material terms thereof) relating to the possession of the Property, or any part thereof, including any and all modifications, supplements, and amendments t (the "Leases").
 - (ii) All environmental audits, soil tests and engineering and feasibility reports, including any and all modifications, supplements and amendments t, with respect to the Property that Seller possesses or has the right to receive.
- (b) From the Effective Date until the date of Closing or earlier termination of this Contract, Seller shall:
 - (i) Not enter into any written or oral contract, lease, easement or right of way agreement, conveyance or any other agreement of any kind with respect to, or affecting, the Property that will not be fully performed on or before the Closing or would be binding on Buyer or the Property after the date of Closing.
 - (ii) Advise the Buyer promptly of any litigation, arbitration, or administrative hearing concerning or affecting the Property.
 - (iii) Not take, or omit to take, any action that would result in a violation of the representations, warranties, covenants, and agreements of Seller.
 - (iv) Not sell, assign, lease or convey any right, title or interest whatsoever in or to the Property, or create, grant or permit to be attached or perfected, any lien, encumbrance, or charge thereon.
- (c) Seller shall indemnify and hold Buyer harmless, to the extent permitted by law, from all loss, liability, and expense, including, without limitation, reasonable

attorneys' fees, arising or incurred as a result of any liens or claims resulting from labor or materials furnished to the Property under any written or oral contracts arising or entered into prior to Closing.

5.03 Survival Beyond Closing. Notwithstanding anything to the contrary contained in this Contract, the representations, warranties, covenants and agreements of Seller contained in this Contract shall survive the Closing, and shall not, in any circumstance, be merged with the Special Warranty Deed, as described in **Article VII, Section 7.02(a)**.

ARTICLE VI

CONDITIONS PRECEDENT TO PERFORMANCE

6.01 Performance of Seller's Obligations. Buyer is not obligated to perform under this Contract unless, within the designated time periods, all of the following shall have occurred:

- (a) Seller has performed, furnished, or caused to be furnished to Buyer all items required to be so performed or furnished under other sections of this Contract; and
- (b) Seller cures or Buyer waives in writing, within the time periods specified in **Article III**, all of Buyer's objections made in accordance with **Article III**.

6.02 Breach of Seller's Representations, Warranties, Covenants and Agreements. Buyer is not obligated to perform under this Contract unless all representations, warranties, covenants and agreements of Seller contained in this Contract are true and correct or have been performed, as applicable, as of the Closing Date, except where specific reference is made to another date.

6.03 Adverse Change. Buyer is not obligated to perform under this Contract, if on the date of Closing, any portion of the Property has been condemned by an entity other than Buyer, or is the subject of condemnation, eminent domain, or other material proceeding initiated by an entity other than Buyer, or the Property, or any part thereof, has been materially or adversely impaired in any manner.

6.04 Review Period. Buyer is not obligated to perform under this Contract if Buyer delivers notice to Seller pursuant to **Article IV, Section 4.01** that Buyer has determined that the Property is unsuitable to or for Buyer's purposes.

6.05 Buyer's Right to Waive Conditions Precedent. Notwithstanding anything contained in this Contract to the contrary, Buyer may, at Buyer's option, elect to waive any of the conditions precedent to the performance of Buyer's obligations under this Contract by giving to the Seller, at any time prior to Closing, a written waiver specifying the waived condition precedent.

6.06 Buyer's Termination if Conditions Precedent Not Satisfied or Waived. If any of the conditions precedent to the performance of Buyer's obligations under this Contract

have not been satisfied by Seller or waived by the Buyer, the Buyer may, by giving written notice to Seller, terminate this Contract. On Buyer's termination, the Earnest Money shall be immediately returned to Buyer by the Title Company. The Seller shall, on written request from Buyer, promptly issue the instructions necessary to instruct the Title Company to return to Buyer the Earnest Money and, thereafter, except as otherwise provided in this Contract, Buyer and Seller shall have no further obligations under this Contract, one to the other.

ARTICLE VII

CLOSING

7.01 Date and Place of Closing. The Closing shall take place in the offices of the Title Company and shall be accomplished through an escrow to be established with the Title Company, as escrowee. The Closing Date shall be on or before 5:00 p.m. seventy five (75) calendar days after the Effective Date, unless otherwise mutually agreed upon by Buyer and Seller.

7.02 Items to be Delivered at the Closing.

- (a) **Seller.** At the Closing, Seller shall deliver or cause to be delivered to Buyer or the Title Company, at the expense of the party designated, the following items:
- (i) The Title Policy, in the form specified in **Article III, Section 3.05**;
 - (ii) The Special Warranty Deed, substantially in the form as attached as Attachment "1", subject only to the Permitted Exceptions, if any, duly executed by Seller and acknowledged;
 - (iii) Evidence of Seller's authority to close this transaction; and
 - (iv) Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.
- (b) **Buyer.** At the Closing, Buyer shall deliver to Seller or the Title Company, the following items:
- (i) The sum required by **Article II, Section 2.01**, less the Earnest Money and interest earned thereon, in the form of a check or cashier's check or other immediately available funds;
 - (ii) Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

7.03 Adjustments at Closing. Notwithstanding anything to the contrary contained in this Contract and without limiting the general application of the provisions of **Section 5.03**, above, the provisions of this **Article VII, Section 7.03** shall survive the Closing.

Ad valorem taxes relating to the Property for the calendar year in which the Closing shall occur shall be prorated between Seller and Buyer as of the Closing Date. If the actual amount of taxes for the calendar year in which the Closing shall occur is not known as of the Closing Date, the proration at Closing shall be based on the amount of taxes due and payable with respect to the Property for the preceding calendar year. As soon as the amount of taxes levied against the Property for the calendar year in which Closing shall occur is known, Seller and Buyer shall readjust in cash the amount of taxes to be paid by each party with the result that Seller shall pay for those taxes attributable to the period of time prior to the Closing Date (including, but not limited to, subsequent assessments for prior years due to change of land usage or ownership occurring prior to the date of Closing) and Buyer shall pay for those taxes attributable to the period of time commencing with the Closing Date.

7.04 Possession at Closing. Possession of the Property shall be delivered to Buyer at Closing.

7.05 Costs of Closing. Each party is responsible for paying the legal fees of its counsel, in negotiating, preparing, and closing the transaction contemplated by this Contract. Buyer will be responsible for paying fees, costs and expenses for the closing of this transaction.

ARTICLE VIII

DEFAULTS AND REMEDIES

8.01 Seller's Defaults and Buyer's Remedies.

(a) **Seller's Defaults.** Seller is in default under this Contract on the occurrence of any one or more of the following events:

- (i) Any of Seller's warranties or representations contained in this Contract are untrue on the Closing Date; or
- (ii) Seller fails to meet, comply with or perform any covenant, agreement, condition precedent or obligation on Seller's part required within the time limits and in the manner required in this Contract; or
- (iii) Seller fails to deliver at Closing, the items specified in **Article VII, Section 7.02(a)** of this Contract for any reason other than a default by Buyer or termination of this Contract by Buyer pursuant to the terms hereof prior to Closing.

(b) **Buyer's Remedies.** If Seller is in default under this Contract, Buyer as Buyer's sole and exclusive remedies for the default, may, at Buyer's sole option, do any of the following:

- (i) Terminate this Contract by written notice delivered to Seller in which

event the Buyer shall be entitled to a return of the Earnest Money, and Seller shall, promptly on written request from Buyer, execute and deliver any documents necessary to cause the Title Company to return to Buyer the Earnest Money;

- (ii) Enforce specific performance of this Contract against Seller, requiring Seller to convey the Property to Buyer subject to no liens, encumbrances, exceptions, and conditions other than those shown on the Title Commitment, whereupon Buyer shall waive title objections, if any, and accept such title without reduction in Purchase Price on account of title defects and shall be entitled to assert any rights for damages based on Seller's representations, warranties and obligations that are not waived by Buyer by its acceptance of Seller's title; and
- (iii) Seek other recourse or relief as may be available to Buyer at or by law, equity, contract or otherwise.

8.02 Buyer's Default and Seller's Remedies.

- (a) **Buyer's Default.** Buyer is in default under this Contract if Buyer fails to deliver at Closing, the items specified in **Article VII, Section 7.02(b)** of this Contract for any reason other than a default by Seller under this Contract or termination of this Contract by Buyer pursuant to the terms hereof prior to Closing.
- (b) **Seller's Remedy.** If Buyer is in default under this Contract, Seller, as Seller's sole and exclusive remedies for the default, may, at Seller's sole option, do either one of the following:
 - (i) Terminate this Contract by written notice delivered to Buyer in which event the Seller shall be entitled to a return of the Earnest Money, and Buyer shall, promptly on written request from Seller, execute and deliver any documents necessary to cause the Title Company to return to Seller the Earnest Money; or
 - (ii) Enforce specific performance of this Contract against Buyer.

ARTICLE IX MISCELLANEOUS

9.01 Notice. All notices, demands, requests, and other communications required hereunder shall be in writing, delivered, unless expressly provided otherwise in this Contract, by telephonic facsimile, by hand delivery or by United States Mail, and shall be deemed to be delivered, upon the earlier to occur of (a) the date provided if provided by telephonic facsimile or hand delivery, and (b) the date of the deposit of, in a regularly maintained receptacle for the United States Mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

SELLER:

Fax _____

BUYER:

City of Denton
Paul Williamson
Real Estate and Capital Support
901-A Texas St.
Denton, Texas 76209
Fax: (940) 349-8951

Copies to:

For Seller:

Fax _____

For Buyer:

Larry Collister, Deputy City Attorney
City of Denton – Legal Department
215 E. McKinney St.
Denton, Texas 76201
Fax: (940) 382-7923

9.02 Governing Law and Venue. This Contract is being executed and delivered and is intended to be performed in the State of Texas, the laws of Texas governing the validity, construction, enforcement and interpretation of this Contract. THIS CONTRACT IS PERFORMABLE IN, AND THE EXCLUSIVE VENUE IS, IN DENTON COUNTY, TEXAS.

9.03 Entirety and Amendments. This Contract embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, related to the Property, and may be amended or supplemented only in writing executed by the party against whom enforcement is sought.

9.04 Parties Bound. This Contract is binding upon and inures to the benefit of Seller and Buyer, and their respective successors and assigns. If requested by Buyer, Seller agrees to execute, acknowledge and record a memorandum of this Contract in the Real Property Records of Denton County, Texas, imparting notice of this Contract to the public.

9.05 Risk of Loss. If any damage or destruction to the Property shall occur prior to Closing, or if any condemnation or any eminent domain proceedings are threatened or initiated by an entity or party other than Buyer that might result in the taking of any portion of the Property, Buyer may, at Buyer's option, do any of the following:

- (a) Terminate this Contract and withdraw from this transaction without cost, obligation or liability, in which case the Earnest Money shall be immediately returned to Buyer; or

- (b) Consummate this Contract, in which case Buyer, with respect to the Property, shall be entitled to receive any (i) in the case of damage or destruction, all insurance proceeds; and (ii) in the case of eminent domain, proceeds paid for the Property related to the eminent domain proceedings.

Buyer shall have a period of up to ten (10) calendar days after receipt of written notification from Seller on the final settlement of all condemnation proceedings or insurance claims related to damage or destruction of any improvement located on the Property, in which to make Buyer's election. In the event Buyer elects to close prior to such final settlement, then the Closing shall take place as provided in **Article VII**, above, and there shall be assigned by Seller to Buyer at Closing all interests of Seller in and to any and all insurance proceeds or condemnation awards which may be payable to Seller on account of such event. In the event Buyer elects to close upon this Contract after final settlement, as described above, Closing shall be held five (5) business days after such final settlement.

9.06 Further Assurances. In addition to the acts and deeds recited in this Contract and contemplated to be performed, executed and/or delivered by Seller and Buyer, Seller and Buyer agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered at the Closing or after the Closing, any further deeds, acts, and assurances as are reasonably necessary to consummate the transactions contemplated. Notwithstanding anything to the contrary contained in this Contract and without limiting the general application of the provisions of **Section 5.03**, above, the provisions of this **Article IX, Section 9.06** shall survive Closing.

9.07 Time is of the Essence. It is expressly agreed between Buyer and Seller that time is of the essence with respect to this Contract.

9.08 Exhibits. The Exhibits which are referenced in, and attached to this Contract, are incorporated in and made a part of, this Contract for all purposes.

9.09 Delegation of Authority. Authority to take any actions that are to be, or may be, taken by Buyer under this Contract, including without limitation, adjustment of the Closing Date, are delegated by Buyer, pursuant to action by the City Council of Denton, Texas, to Frank Payne, P.E., City Engineer of Buyer, or his designee.

9.10 Contract Execution. This Contract of Sale may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any of the parties may execute this Agreement by signing any such counterpart.

9.11 Business Days. If the Closing Date or the day of performance required or permitted under this Contract falls on a Saturday, Sunday or Denton County holiday, then the Closing Date or the date of such performance, as the case may be, shall be the next following regular business day.

SELLER:

JOHN R. LOTT, Individually, and of OPAL
ESTELLE HOLDINGS, LLC, a Texas series
limited liability company

Executed by Seller on the _____ day of _____, 2014.

BUYER:

By: _____
GEORGE C. CAMPBELL, CITY MANAGER

Executed by Buyer on the _____ day of _____, 2014.

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: _____

RECEIPT OF AGREEMENT BY TITLE COMPANY

By its execution below, Title Company acknowledges receipt of an executed copy of this Contract. Title Company agrees to comply with, and be bound by, the terms and provisions of this Contract and to perform its duties pursuant to the provisions of this Contract and comply with Section 6045(e) of the Internal Revenue Code of 1986, as amended from time to time, and as further set forth in any regulations or forms promulgated thereunder.

TITLE COMPANY:

Title Resources, LLC
525 South Loop 288, Suite 125
Denton, Texas 76205
Phone: (940) 381-1006
Fax: (940) 898-0121

By: _____

Printed Name: _____

Title: _____

Contract receipt date: _____, 2014

EXHIBIT "A"
TO
CONTRACT OF SALE

Legal Description and Depiction of Property

All those certain lots, tracts or parcels of land lying and being situated in the City and County of Denton, State of Texas, and being Lot 5 of Oak Street Terrace, an Addition to the City of Denton, Denton County, Texas, according to the Plat thereof recorded in Volume 407, Page 562, Deed Records, Denton County, Texas. Also known as 102 Bonnie Brae Street.

ATTACHMENT "1"
TO
CONTRACT OF SALE

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.

SPECIAL WARRANTY DEED

STATE OF TEXAS §

COUNTY OF DENTON § KNOW ALL MEN BY THESE PRESENTS

That JOHN R. LOTT, individually, and 102-8 BB, LLC, a series of OPAL ESTELLE HOLDINGS, LLC, a Texas series limited liability company ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration to Grantor in hand paid by the City of Denton, Texas, a Texas home rule municipal corporation ("Grantee"), 215 E. McKinney, Denton, Texas 76201, the receipt and sufficiency of which is acknowledged, subject to the reservations set forth below, has GRANTED, SOLD and CONVEYED, and does GRANT, SELL and CONVEY, unto Grantee all the real property in Denton County, Texas being particularly described on Exhibit "A" attached and made a part for all purposes, and being located in Denton County, Texas, together with any and all rights or interests of Grantor in and to adjacent streets, alleys and rights of way and together with all and singular the improvements and fixtures thereon and all other rights and appurtenances (collectively, the "Property").

Grantor, subject to the limitation of such reservation made, reserves, for itself, its successors and assigns all oil, gas and other minerals in, on and under and that may be produced from the Property. Grantor, its successors and assigns shall not have the right to use or access the surface of the Property, in any way, manner or form, in connection

with or related to the reserved oil, gas, and other minerals and/or related to exploration and/or production of the oil, gas and other minerals reserved, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas and other minerals, and/or related to the exploration or production of same.

The term "minerals" shall include oil, gas and all associated hydrocarbons, and shall exclude (i) all substances (except oil, gas and all associated hydrocarbons) that any reasonable extraction, mining or other exploration and/or production method, operation, process or procedure would consume, deplete or destroy the surface of the Property; and (ii) all substances (except oil and gas) which are at or near the surface of the Property. The intent of the parties is that the meaning of the term "minerals" as utilized, shall be in accordance with that set forth in *Reed v. Wylie*, 597 S.W.2d 743 (Tex. 1980).

The term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

This conveyance is subject to the following:

(All of those Exceptions from Coverage found on Schedule B of the Owners Title Policy to which referenced is made for all purposes and incorporated by reference.)

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances in anywise belonging unto Grantee and Grantee's successors and assigns forever; and Grantor does bind Grantor and Grantor's successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or

to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise.

EXECUTED the _____ day of _____, 2014

GRANTOR:

JOHN R. LOTT, individually, and as
manager of OPAL ESTELLE HOLDINGS,
LLC, a Texas series limited liability
company

State of Texas §
§
County of _____ §

This instrument was acknowledged before me on this _____ day of _____, 2014 by JOHN R. LOTT, individually, and as manager of 102-8 BB, LLC, a series of OPAL ESTELLE HOLDINGS, LLC, a Texas series limited liability company.

Notary Public, State of _____
My Commission Expires: _____

Upon Filing Return To:
The City of Denton-Engineering
Attn: Paul Williamson
901-A Texas Street
Denton, TX 76209

Send Tax Billing Statements To:
The City of Denton
Attn: Finance Department
215 East McKinney Street
Denton, Texas 76201

Exhibit "A" PAGE 1 to SWD

All those certain lots, tracts or parcels of land lying and being situated in the City and County of Denton, State of Texas, and being Lot 5 of Oak Street Terrace, an Addition to the City of Denton, Denton County, Texas, according to the Plat thereof recorded in Volume 407, Page 562, Deed Records, Denton County, Texas. Also known as 102 Bonnie Brae Street.

Exhibit B

Option to Purchase

(108 Bonnie Brae St.)

Date: _____, 2014

Seller: John R. Lott, individually, and 102-8 BB, LLC, a series of Opal Estelle Holdings, LLC, a Texas limited liability company

Seller's Address: 14 E. Oakwood Hills Dr., Chandler, Arizona 85248

Buyer: City of Denton, Texas, a Texas home-rule municipal corporation

Buyer's Address: 215 E. McKinney St., Denton, Texas 76201

Property: All those certain lots, tracts or parcels of land lying and being situated in the City and County of Denton, State of Texas, and being Lot 4 of Oak Street Terrace, an Addition to the City of Denton, Denton County, Texas, according to the Plat thereof recorded in Volume 407, Page 562, Deed Records, Denton County, Texas. Also known as 108 Bonnie Brae Street.

Option Fee: \$2,000.00

Expiration Date: December 31, 2014

Contract: Contract of Sale attached as Exhibit A.

Purchase Price: \$117,750.00

Title Company: Title Resources

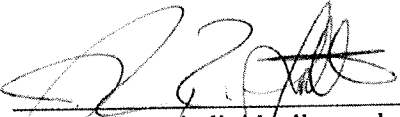
Title Company's Address: 525 S. Loop 288, Suite 125
Denton, Texas 76205

In consideration of the Option Fee, Seller grants to Buyer the exclusive and irrevocable option to purchase the Property on the following terms and conditions:

1. Application of Option Fee: The Option Fee will be applied to the Purchase Price.
2. Exercise of Option: To exercise the option, Buyer must execute and deliver to Seller the Contract by the Expiration Date. Within three business days of receiving Buyer's signed Contract, Seller must execute and deliver the Contract to Title Company.
3. Termination of Option: If Buyer does not exercise the option by the Expiration Date, the option terminates, Seller retains the Option Fee, and Buyer will execute and deliver to Seller a recordable release of the option.
4. Seller's Default: If Buyer exercises the option but Seller does not timely execute and deliver the Contract, Buyer has all applicable remedies, including specific performance.

5. Extension of Expiration Date: The Expiration Date may be extended by 60 days if Buyer pays Seller the amount of \$1,000.00 by the Expiration Date.

Optionor/Seller: John R. Lott, individually, and 102-8 BB, LLC, a series of Opal Estelle Holdings, LLC, a Texas limited liability company



John R. Lott, individually, and as manager of Opal Estelle Holdings, LLC, a Texas series limited liability company

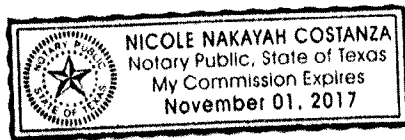
Optionee/Buyer: City of Denton, Texas

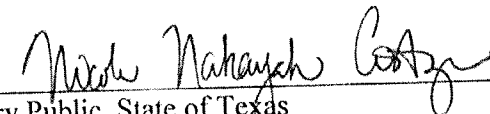
George Campbell, City Manager

Acknowledgments

State of Texas §
Denton County §

This instrument was acknowledged before me on August 28, 2014, by John R. Lott, individually, and as manager of Opal Estelle Holdings, LLC, a Texas series limited liability company, on behalf of Opal Estelle Holdings, LLC.





Notary Public, State of Texas

State of Texas §
Denton County §

This instrument was acknowledged before me on _____, 2014, by George Campbell, City Manager of the City of Denton, Texas, a Texas home-rule municipal corporation, on behalf of the City of Denton, Texas.

Notary Public, State of Texas

After recording, return to:
City of Denton - Real Estate Division
901A Texas St.
Denton, Texas 76210

EXHIBIT A TO OPTION AGREEMENT

CONTRACT OF SALE

NOTICE

YOU, AS OWNER OF THE PROPERTY (AS DEFINED BELOW), HAVE THE RIGHT TO: (1) DISCUSS ANY OFFER OR AGREEMENT REGARDING THE CITY OF DENTON'S ACQUISITION OF THE PROPERTY WITH OTHERS; OR (2) KEEP THE OFFER OR AGREEMENT CONFIDENTIAL, UNLESS THE OFFER OR AGREEMENT IS SUBJECT TO CHAPTER 552, GOVERNMENT CODE.

This Contract of Sale (the "Contract") is made this _____ day of _____, 2014, between Seller, JOHN R. LOTT, individually, and as manager of 102-8 BB, LLC, a series of OPAL ESTELLE HOLDINGS, LLC, a Texas series limited liability company, and Buyer, the City of Denton, Texas, a Texas home rule municipal corporation. The Effective Date of this Contract is the date of execution of the same by the Buyer.

RECITALS

WHEREAS, Seller owns that certain tract of land being more particularly described on Exhibit "A" attached, being located in Denton County, Texas (the "Land"); and

WHEREAS, Seller wants to sell to Buyer, and Buyer wants to buy from Seller, the Land, together with any and all rights or interests of Seller in and to adjacent streets, alleys and rights of way and together with all and singular the improvements and fixtures thereon and all other rights and appurtenances to the Land (collectively, the "Property").

ARTICLE I SALE OF PROPERTY

For the consideration set forth, and upon the terms, conditions and provisions contained, and subject to the reservations, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property.

Seller, subject to the limitation of such reservation made, shall reserve, for itself, its successors and assigns all oil, gas and other minerals in, on and under and that may be produced from the Property. Seller, its successors and assigns shall not have the right to use or access the surface of the Property, in any way, manner or form, in connection with or related to the reserved oil, gas, and other minerals and/or related to exploration and/or production of the oil, gas and other minerals reserved, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic

activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas and other minerals, and/or related to the exploration or production of same.

The term "minerals" shall include oil, gas and all associated hydrocarbons, and shall exclude (i) all substances (except oil, gas and all associated hydrocarbons) that any reasonable extraction, mining or other exploration and/or production method, operation, process or procedure would consume, deplete or destroy the surface of the Property; and (ii) all substances (except oil and gas) which are at or near the surface of the Property. The intent of the parties is that the meaning of the term "minerals" as utilized, shall be in accordance with that set forth in *Reed v. Wylie*, 597 S.W.2d 743 (Tex. 1980).

The term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

ARTICLE II

PURCHASE PRICE AND EARNEST MONEY

2.01 Purchase Price. The Purchase Price to be paid to Seller for the Property is the sum of ONE HUNDRED SEVENTEEN THOUSAND SEVEN HUNDRED FIFTY and NO/100 US Dollars (\$117,750.00) (the "Purchase Price").

2.02 Earnest Money. Buyer shall deposit the sum of Five Hundred and No/100 Dollars (\$500.00), as Earnest Money with Title Resources, LLC, 525 South Loop 288, Suite 125, Denton, Texas, 76205, ("Title Company"), as escrow agent, within seven (7) calendar days of the Effective Date. All interest earned thereon shall become part of the Earnest Money and shall be applied or disposed of in the same manner as the original Earnest Money deposit, as provided in this Contract. If the purchase contemplated is consummated in accordance with the terms and the provisions of this Contract, the Earnest Money, together with all interest earned thereon, shall be applied to the Purchase Price at Closing. In all other events, the Earnest Money, and the interest accrued thereon, shall be disposed of by the Title Company as provided in this Contract.

2.03 Independent Contract Consideration. Within seven (7) calendar days after the Effective Date, Buyer shall deliver to the Title Company, payable to and for the benefit of Seller, a check in the amount of One Hundred and No/100 Dollars (\$100.00) (the "Independent Contract Consideration"), which amount the parties acknowledge and agree has been bargained for and agreed to as consideration for Seller's execution and delivery of the Contract. The Independent Contract Consideration is in addition to, and independent of any other consideration or payment provided in this Contract, is non-refundable, and shall be retained by Seller notwithstanding any other provision of this Contract.

ARTICLE III
TITLE AND SURVEY

3.01 Title Commitment.

- (a) Within twenty (20) calendar days after the Effective Date, Seller shall cause to be furnished to Buyer a current Commitment for Title Insurance (the "Title Commitment") for the Property, issued by Title Company. The Title Commitment shall set forth the state of title to the Property, including a list of liens, mortgages, security interests, encumbrances, pledges, assignments, claims, charges, leases (surface, space, mineral, or otherwise), conditions, restrictions, options, severed mineral or royalty interests, conditional sales contracts, rights of first refusal, restrictive covenants, exceptions, easements (temporary or permanent), rights-of-way, encroachments, or any other outstanding claims, interests, estates or equities of any nature (each of which are referred to as an "Exception").
- (b) Along with the Title Commitment, Seller shall also cause to be delivered to Buyer, at Buyer's sole cost and expense, true and correct copies of all instruments that create or evidence Exceptions (the "Exception Documents"), including those described in the Title Commitment as exceptions to which the conveyance will be subject and/or which are required to be released or cured at or prior to Closing.

3.02 Survey. Within thirty (30) calendar days after the Effective Date, Seller shall cause to be prepared at Buyer's expense, a current on the ground survey of the Property (the "Survey"). The contents of the Survey shall be prepared by a surveyor selected by Buyer and shall include the matters prescribed by Buyer, which may include but not be limited to, a depiction of the location of all roads, streets, easements and rights of way, both on and adjoining the Property, water courses, 100 year flood plain, fences and improvements and structures of any kind. The Survey shall describe the size of the Property, in acres, and contain a metes and bounds description thereof. Seller shall furnish or cause to be furnished any affidavits, certificates, assurances, and/or resolutions as required by the Title Company in order to amend the survey exception as required by **Section 3.05** below. The description of the Property as set forth in the Survey, at the Buyer's election, shall be used to describe the Property in the deed to convey the Property to Buyer and shall be the description set forth in the Title Policy.

3.03 Review of Title Commitment, Survey and Exception Documents. Buyer shall have a period of ten (10) calendar days (the "Title Review Period") commencing with the day Buyer receives the last of the Title Commitment, the Survey, and the Exception Documents, in which to give written notice to Seller, specifying Buyer's objections to one or more of the items ("Objections"), if any. All items set forth in the Schedule C of the Title Commitment, and all other items set forth in the Title Commitment which are required to be released or otherwise satisfied at or prior to Closing, shall be deemed to be Objections without any action by Buyer.

3.04 Seller's Obligation to Cure; Buyer's Right to Terminate. The Seller shall, within ten (10) calendar days after Seller is provided notice of Objections, either satisfy the Objections at Seller's sole cost and expense or promptly notify Buyer in writing of the Objections that Seller cannot or will not satisfy at Seller's expense. Notwithstanding the foregoing sentence, Seller shall, in any event, be obligated to cure those Objections or Exceptions that have been voluntarily placed on or against the Property by Seller after the Effective Date. If Seller fails or refuses to satisfy any Objections that Seller is not obligated to cure within the allowed ten (10) calendar day period, then Buyer has the option of either:

- (a) waiving the unsatisfied Objections by, and only by, notice in writing to Seller prior to Closing, in which event those Objections shall become Permitted Exceptions, or
- (b) terminating this Contract by notice in writing prior to Closing and receiving back the Earnest Money, in which latter event Seller and Buyer shall have no further obligations, one to the other, with respect to the subject matter of this Contract.

3.05 Title Policy. At Closing, Seller, at Buyer's sole cost and expense, shall cause a standard Texas Owner's Policy of Title Insurance ("Title Policy") to be furnished to Buyer. The Title Policy shall be issued by the Title Company, in the amount of the Purchase Price and insuring that Buyer has indefeasible fee simple title to the Property, subject only to the Permitted Exceptions. The Title Policy may contain only the Permitted Exceptions and shall contain no other exceptions to title, with the standard printed or common exceptions amended or deleted as follows:

- (a) survey exception must be amended if required by Buyer to read "shortages in area" only (although Schedule C of the Title Commitment may condition amendment on the presentation of an acceptable survey and payment, to be borne solely by Buyer, of any required additional premium);
- (b) no exception will be permitted for "visible and apparent easements" or words to that effect (although reference may be made to any specific easement or use shown on the Survey, if a Permitted Exception);
- (c) no exception will be permitted for "rights of parties in possession";
- (d) no liens will be shown on Schedule B.

Notwithstanding the enumeration of the following exceptions, amendments and/or deletions, Buyer may object to any Exception it deems material, in its sole discretion.

ARTICLE IV
FEASIBILITY REVIEW PERIOD

4.01 Review Period. Any term or provision of this Contract notwithstanding, the obligations of Buyer specified in this Contract are wholly conditioned on Buyer's having determined, in Buyer's sole and absolute discretion, during the period commencing with the Effective Date of this Contract and ending sixty (60) calendar days thereafter (the "Absolute Review Period"), based on such tests, examinations, studies, investigations and inspections of the Property the Buyer deems necessary or desirable, including but not limited to studies or inspections to determine the existence of any environmental hazards or conditions, performed at Buyer's sole cost, that Buyer finds the Property suitable for Buyer's purposes. Buyer is granted the right to conduct engineering studies of the Property, and to conduct a physical inspection of the Property, including inspections that invade the surface and subsurface of the Property. If Buyer determines, in its sole judgment, that the Property is not suitable, for any reason, for Buyer's intended use or purpose, the Buyer may terminate this Contract by written notice to the Seller, as soon as reasonably practicable, but in any event prior to the expiration of the Absolute Review Period, in which case the Earnest Money will be returned to Buyer, and neither Buyer nor Seller shall have any further duties or obligations hereunder. In the event Buyer elects to terminate this Contract pursuant to the terms of this **Article IV, Section 4.01**, Buyer will provide to Seller copies of (i) any and all non-confidential and non-privileged reports and studies obtained by Buyer during the Absolute Review Period; and (ii) the Survey.

ARTICLE V
REPRESENTATIONS, WARRANTIES, COVENANTS AND
AGREEMENTS

5.01 Representations and Warranties of Seller. To induce Buyer to enter into this Contract and consummate the sale and purchase of the Property in accordance with the terms and provisions herewith, Seller represents and warrants to Buyer as of the Effective Date and as of the Closing Date, except where specific reference is made to another date, that:

- (a) The descriptive information concerning the Property set forth in this Contract is complete, accurate, true and correct.
- (b) There are no adverse or other parties in possession of the Property or any part thereof, and no party has been granted any license, lease or other right related to the use or possession of the Property, or any part thereof, except those described in the Leases, as defined in **Article V, Section 5.02(a)**.
- (c) The Seller has good and marketable fee simple title to the Property, subject only to the Permitted Exceptions.
- (d) The Seller has the full right, power, and authority to sell and convey the Property as provided in this Contract and to carry out Seller's obligations hereunder.

- (e) The Seller has not received notice of, and has no other knowledge or information of, any pending or threatened judicial or administrative action, or any action pending or threatened by adjacent landowners or other persons against or affecting the Property.
- (f) The Seller has disclosed to Buyer in writing of any and all facts and circumstances relating to the physical condition of the Property that may materially and adversely affect the Property and operation or intended operation thereof, or any portion thereof, of which Seller has knowledge.
- (g) The Seller has paid all real estate and personal property taxes, assessments, excises, and levies that are presently due, if any, which are against or are related to the Property, or will be due as of the Closing, and the Property will be subject to no such liens.
- (h) The Seller shall convey the Property free and clear of all debts, liens and encumbrances.
- (i) Seller has not contracted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction or taken any action which would result in any real estate broker commissions or finder's fee or other fees payable to any other party with respect to the transactions contemplated by this Contract.
- (j) To the best of Seller's knowledge, there has not occurred the disposal or release of any Hazardous Substance to, on or from the Property.

As used in this Contract, "Hazardous Substance" means and includes all hazardous and toxic substances, waste or materials, chemicals, and any pollutant or contaminant, including without limitation, PCB's, asbestos, asbestos-containing material, petroleum products and raw materials, that are included under or regulated by any Environmental Law or that would or may pose a health, safety or environmental hazard.

As used in this Contract, "Environmental Law" means and includes all federal, state, and local statutes, ordinances, regulations and rules presently in force or hereafter enacted relating to environmental quality, contamination, and clean-up of Hazardous Substances, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), as amended, Toxic Substance Control Act, 15 U.S.C. 2601, et seq., and state superlien and environmental clean-up statutes and all rules and regulations presently or hereafter promulgated under or related to said statutes, as amended.

- (k) All Leases, as defined in **Article V, Section 5.02(a)**, shall have expired or otherwise terminated and any and all tenants or parties occupying the Property pursuant to the Leases shall have permanently abandoned and vacated the Property on or before the date of Closing.
- (l) The Seller is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

5.02 Covenants and Agreements of Seller. Seller covenants and agrees with Buyer as follows:

- (a) Unless stated otherwise, within ten (10) calendar days after the Effective Date, Seller, at Seller’s sole cost and expense, shall deliver to Buyer, with respect to the Property, true, correct, and complete copies of the following:
 - (i) All lease agreements and/or occupancy agreements and/or licenses of any kind or nature (if oral, Seller shall provide to Buyer in writing all material terms thereof) relating to the possession of the Property, or any part thereof, including any and all modifications, supplements, and amendments t (the “Leases”).
 - (ii) All environmental audits, soil tests and engineering and feasibility reports, including any and all modifications, supplements and amendments t, with respect to the Property that Seller possesses or has the right to receive.
- (b) From the Effective Date until the date of Closing or earlier termination of this Contract, Seller shall:
 - (i) Not enter into any written or oral contract, lease, easement or right of way agreement, conveyance or any other agreement of any kind with respect to, or affecting, the Property that will not be fully performed on or before the Closing or would be binding on Buyer or the Property after the date of Closing.
 - (ii) Advise the Buyer promptly of any litigation, arbitration, or administrative hearing concerning or affecting the Property.
 - (iii) Not take, or omit to take, any action that would result in a violation of the representations, warranties, covenants, and agreements of Seller.
 - (iv) Not sell, assign, lease or convey any right, title or interest whatsoever in or to the Property, or create, grant or permit to be attached or perfected, any lien, encumbrance, or charge thereon.
- (c) Seller shall indemnify and hold Buyer harmless, to the extent permitted by law, from all loss, liability, and expense, including, without limitation, reasonable

attorneys' fees, arising or incurred as a result of any liens or claims resulting from labor or materials furnished to the Property under any written or oral contracts arising or entered into prior to Closing.

5.03 Survival Beyond Closing. Notwithstanding anything to the contrary contained in this Contract, the representations, warranties, covenants and agreements of Seller contained in this Contract shall survive the Closing, and shall not, in any circumstance, be merged with the Special Warranty Deed, as described in **Article VII, Section 7.02(a)**.

ARTICLE VI

CONDITIONS PRECEDENT TO PERFORMANCE

6.01 Performance of Seller's Obligations. Buyer is not obligated to perform under this Contract unless, within the designated time periods, all of the following shall have occurred:

- (a) Seller has performed, furnished, or caused to be furnished to Buyer all items required to be so performed or furnished under other sections of this Contract; and
- (b) Seller cures or Buyer waives in writing, within the time periods specified in **Article III**, all of Buyer's objections made in accordance with **Article III**.

6.02 Breach of Seller's Representations, Warranties, Covenants and Agreements. Buyer is not obligated to perform under this Contract unless all representations, warranties, covenants and agreements of Seller contained in this Contract are true and correct or have been performed, as applicable, as of the Closing Date, except where specific reference is made to another date.

6.03 Adverse Change. Buyer is not obligated to perform under this Contract, if on the date of Closing, any portion of the Property has been condemned by an entity other than Buyer, or is the subject of condemnation, eminent domain, or other material proceeding initiated by an entity other than Buyer, or the Property, or any part thereof, has been materially or adversely impaired in any manner.

6.04 Review Period. Buyer is not obligated to perform under this Contract if Buyer delivers notice to Seller pursuant to **Article IV, Section 4.01** that Buyer has determined that the Property is unsuitable to or for Buyer's purposes.

6.05 Buyer's Right to Waive Conditions Precedent. Notwithstanding anything contained in this Contract to the contrary, Buyer may, at Buyer's option, elect to waive any of the conditions precedent to the performance of Buyer's obligations under this Contract by giving to the Seller, at any time prior to Closing, a written waiver specifying the waived condition precedent.

6.06 Buyer's Termination if Conditions Precedent Not Satisfied or Waived. If any of the conditions precedent to the performance of Buyer's obligations under this Contract

have not been satisfied by Seller or waived by the Buyer, the Buyer may, by giving written notice to Seller, terminate this Contract. On Buyer's termination, the Earnest Money shall be immediately returned to Buyer by the Title Company. The Seller shall, on written request from Buyer, promptly issue the instructions necessary to instruct the Title Company to return to Buyer the Earnest Money and, thereafter, except as otherwise provided in this Contract, Buyer and Seller shall have no further obligations under this Contract, one to the other.

ARTICLE VII **CLOSING**

7.01 Date and Place of Closing. The Closing shall take place in the offices of the Title Company and shall be accomplished through an escrow to be established with the Title Company, as escrowee. The Closing Date shall be on or before 5:00 p.m. seventy five (75) calendar days after the Effective Date, unless otherwise mutually agreed upon by Buyer and Seller.

7.02 Items to be Delivered at the Closing.

- (a) **Seller.** At the Closing, Seller shall deliver or cause to be delivered to Buyer or the Title Company, at the expense of the party designated, the following items:
- (i) The Title Policy, in the form specified in **Article III, Section 3.05**;
 - (ii) The Special Warranty Deed, substantially in the form as attached as Attachment "I", subject only to the Permitted Exceptions, if any, duly executed by Seller and acknowledged;
 - (iii) Evidence of Seller's authority to close this transaction; and
 - (iv) Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.
- (b) **Buyer.** At the Closing, Buyer shall deliver to Seller or the Title Company, the following items:
- (i) The sum required by **Article II, Section 2.01**, less the Earnest Money and interest earned thereon, in the form of a check or cashier's check or other immediately available funds;
 - (ii) Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

7.03 Adjustments at Closing. Notwithstanding anything to the contrary contained in this Contract and without limiting the general application of the provisions of **Section 5.03**, above, the provisions of this **Article VII, Section 7.03** shall survive the Closing.

Ad valorem taxes relating to the Property for the calendar year in which the Closing shall occur shall be prorated between Seller and Buyer as of the Closing Date. If the actual amount of taxes for the calendar year in which the Closing shall occur is not known as of the Closing Date, the proration at Closing shall be based on the amount of taxes due and payable with respect to the Property for the preceding calendar year. As soon as the amount of taxes levied against the Property for the calendar year in which Closing shall occur is known, Seller and Buyer shall readjust in cash the amount of taxes to be paid by each party with the result that Seller shall pay for those taxes attributable to the period of time prior to the Closing Date (including, but not limited to, subsequent assessments for prior years due to change of land usage or ownership occurring prior to the date of Closing) and Buyer shall pay for those taxes attributable to the period of time commencing with the Closing Date.

7.04 Possession at Closing. Possession of the Property shall be delivered to Buyer at Closing.

7.05 Costs of Closing. Each party is responsible for paying the legal fees of its counsel, in negotiating, preparing, and closing the transaction contemplated by this Contract. Buyer will be responsible for paying fees, costs and expenses for the closing of this transaction.

ARTICLE VIII

DEFAULTS AND REMEDIES

8.01 Seller's Defaults and Buyer's Remedies.

- (a) **Seller's Defaults.** Seller is in default under this Contract on the occurrence of any one or more of the following events:
- (i) Any of Seller's warranties or representations contained in this Contract are untrue on the Closing Date; or
 - (ii) Seller fails to meet, comply with or perform any covenant, agreement, condition precedent or obligation on Seller's part required within the time limits and in the manner required in this Contract; or
 - (iii) Seller fails to deliver at Closing, the items specified in **Article VII, Section 7.02(a)** of this Contract for any reason other than a default by Buyer or termination of this Contract by Buyer pursuant to the terms hereof prior to Closing.
- (b) **Buyer's Remedies.** If Seller is in default under this Contract, Buyer as Buyer's sole and exclusive remedies for the default, may, at Buyer's sole option, do any of the following:
- (i) Terminate this Contract by written notice delivered to Seller in which

event the Buyer shall be entitled to a return of the Earnest Money, and Seller shall, promptly on written request from Buyer, execute and deliver any documents necessary to cause the Title Company to return to Buyer the Earnest Money;

- (ii) Enforce specific performance of this Contract against Seller, requiring Seller to convey the Property to Buyer subject to no liens, encumbrances, exceptions, and conditions other than those shown on the Title Commitment, whereupon Buyer shall waive title objections, if any, and accept such title without reduction in Purchase Price on account of title defects and shall be entitled to assert any rights for damages based on Seller's representations, warranties and obligations that are not waived by Buyer by its acceptance of Seller's title; and
- (iii) Seek other recourse or relief as may be available to Buyer at or by law, equity, contract or otherwise.

8.02 Buyer's Default and Seller's Remedies.

- (a) **Buyer's Default.** Buyer is in default under this Contract if Buyer fails to deliver at Closing, the items specified in **Article VII, Section 7.02(b)** of this Contract for any reason other than a default by Seller under this Contract or termination of this Contract by Buyer pursuant to the terms hereof prior to Closing.
- (b) **Seller's Remedy.** If Buyer is in default under this Contract, Seller, as Seller's sole and exclusive remedies for the default, may, at Seller's sole option, do either one of the following:
 - (i) Terminate this Contract by written notice delivered to Buyer in which event the Seller shall be entitled to a return of the Earnest Money, and Buyer shall, promptly on written request from Seller, execute and deliver any documents necessary to cause the Title Company to return to Seller the Earnest Money; or
 - (ii) Enforce specific performance of this Contract against Buyer.

ARTICLE IX MISCELLANEOUS

9.01 Notice. All notices, demands, requests, and other communications required hereunder shall be in writing, delivered, unless expressly provided otherwise in this Contract, by telephonic facsimile, by hand delivery or by United States Mail, and shall be deemed to be delivered, upon the earlier to occur of (a) the date provided if provided by telephonic facsimile or hand delivery, and (b) the date of the deposit of, in a regularly maintained receptacle for the United States Mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

SELLER:

Fax _____

BUYER:

City of Denton
Paul Williamson
Real Estate and Capital Support
901-A Texas St.
Denton, Texas 76209
Fax: (940) 349-8951

Copies to:

For Seller:

Fax _____

For Buyer:

Larry Collister, Deputy City Attorney
City of Denton – Legal Department
215 E. McKinney St.
Denton, Texas 76201
Fax: (940) 382-7923

9.02 Governing Law and Venue. This Contract is being executed and delivered and is intended to be performed in the State of Texas, the laws of Texas governing the validity, construction, enforcement and interpretation of this Contract. THIS CONTRACT IS PERFORMABLE IN, AND THE EXCLUSIVE VENUE IS, IN DENTON COUNTY, TEXAS.

9.03 Entirety and Amendments. This Contract embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, related to the Property, and may be amended or supplemented only in writing executed by the party against whom enforcement is sought.

9.04 Parties Bound. This Contract is binding upon and inures to the benefit of Seller and Buyer, and their respective successors and assigns. If requested by Buyer, Seller agrees to execute, acknowledge and record a memorandum of this Contract in the Real Property Records of Denton County, Texas, imparting notice of this Contract to the public.

9.05 Risk of Loss. If any damage or destruction to the Property shall occur prior to Closing, or if any condemnation or any eminent domain proceedings are threatened or initiated by an entity or party other than Buyer that might result in the taking of any portion of the Property, Buyer may, at Buyer's option, do any of the following:

- (a) Terminate this Contract and withdraw from this transaction without cost, obligation or liability, in which case the Earnest Money shall be immediately returned to Buyer; or

- (b) Consummate this Contract, in which case Buyer, with respect to the Property, shall be entitled to receive any (i) in the case of damage or destruction, all insurance proceeds; and (ii) in the case of eminent domain, proceeds paid for the Property related to the eminent domain proceedings.

Buyer shall have a period of up to ten (10) calendar days after receipt of written notification from Seller on the final settlement of all condemnation proceedings or insurance claims related to damage or destruction of any improvement located on the Property, in which to make Buyer's election. In the event Buyer elects to close prior to such final settlement, then the Closing shall take place as provided in **Article VII**, above, and there shall be assigned by Seller to Buyer at Closing all interests of Seller in and to any and all insurance proceeds or condemnation awards which may be payable to Seller on account of such event. In the event Buyer elects to close upon this Contract after final settlement, as described above, Closing shall be held five (5) business days after such final settlement.

9.06 Further Assurances. In addition to the acts and deeds recited in this Contract and contemplated to be performed, executed and/or delivered by Seller and Buyer, Seller and Buyer agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered at the Closing or after the Closing, any further deeds, acts, and assurances as are reasonably necessary to consummate the transactions contemplated. Notwithstanding anything to the contrary contained in this Contract and without limiting the general application of the provisions of **Section 5.03**, above, the provisions of this **Article IX, Section 9.06** shall survive Closing.

9.07 Time is of the Essence. It is expressly agreed between Buyer and Seller that time is of the essence with respect to this Contract.

9.08 Exhibits. The Exhibits which are referenced in, and attached to this Contract, are incorporated in and made a part of, this Contract for all purposes.

9.09 Delegation of Authority. Authority to take any actions that are to be, or may be, taken by Buyer under this Contract, including without limitation, adjustment of the Closing Date, are delegated by Buyer, pursuant to action by the City Council of Denton, Texas, to Frank Payne, P.E., City Engineer of Buyer, or his designee.

9.10 Contract Execution. This Contract of Sale may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any of the parties may execute this Agreement by signing any such counterpart.

9.11 Business Days. If the Closing Date or the day of performance required or permitted under this Contract falls on a Saturday, Sunday or Denton County holiday, then the Closing Date or the date of such performance, as the case may be, shall be the next following regular business day.

SELLER:

JOHN R. LOTT, Individually, and of OPAL
ESTELLE HOLDINGS, LLC, a Texas series
limited liability company

Executed by Seller on the _____ day of _____, 2014.

BUYER:

By: _____
GEORGE C. CAMPBELL, CITY MANAGER

Executed by Buyer on the _____ day of _____, 2014.

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: _____

RECEIPT OF AGREEMENT BY TITLE COMPANY

By its execution below, Title Company acknowledges receipt of an executed copy of this Contract. Title Company agrees to comply with, and be bound by, the terms and provisions of this Contract and to perform its duties pursuant to the provisions of this Contract and comply with Section 6045(e) of the Internal Revenue Code of 1986, as amended from time to time, and as further set forth in any regulations or forms promulgated thereunder.

TITLE COMPANY:

Title Resources, LLC
525 South Loop 288, Suite 125
Denton, Texas 76205
Phone: (940) 381-1006
Fax: (940) 898-0121

By: _____

Printed Name: _____

Title: _____

Contract receipt date: _____, 2014

EXHIBIT "A"
TO
CONTRACT OF SALE

Legal Description and Depiction of Property

All those certain lots, tracts or parcels of land lying and being situated in the City and County of Denton, State of Texas, and being Lot 4 of Oak Street Terrace, an Addition to the City of Denton, Denton County, Texas, according to the Plat thereof recorded in Volume 407, Page 562, Deed Records, Denton County, Texas. Also known as 108 Bonnie Brae Street.

ATTACHMENT "1"
TO
CONTRACT OF SALE

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.

SPECIAL WARRANTY DEED

STATE OF TEXAS §

COUNTY OF DENTON § KNOW ALL MEN BY THESE PRESENTS

That JOHN R. LOTT, individually, and 102-8 BB, LLC, a series of OPAL ESTELLE HOLDINGS, LLC, a Texas series limited liability company ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration to Grantor in hand paid by the City of Denton, Texas, a Texas home rule municipal corporation ("Grantee"), 215 E. McKinney, Denton, Texas 76201, the receipt and sufficiency of which is acknowledged, subject to the reservations set forth below, has GRANTED, SOLD and CONVEYED, and does GRANT, SELL and CONVEY, unto Grantee all the real property in Denton County, Texas being particularly described on Exhibit "A" attached and made a part for all purposes, and being located in Denton County, Texas, together with any and all rights or interests of Grantor in and to adjacent streets, alleys and rights of way and together with all and singular the improvements and fixtures thereon and all other rights and appurtenances (collectively, the "Property").

Grantor, subject to the limitation of such reservation made, reserves, for itself, its successors and assigns all oil, gas and other minerals in, on and under and that may be produced from the Property. Grantor, its successors and assigns shall not have the right to use or access the surface of the Property, in any way, manner or form, in connection

with or related to the reserved oil, gas, and other minerals and/or related to exploration and/or production of the oil, gas and other minerals reserved, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas and other minerals, and/or related to the exploration or production of same.

The term "minerals" shall include oil, gas and all associated hydrocarbons, and shall exclude (i) all substances (except oil, gas and all associated hydrocarbons) that any reasonable extraction, mining or other exploration and/or production method, operation, process or procedure would consume, deplete or destroy the surface of the Property; and (ii) all substances (except oil and gas) which are at or near the surface of the Property. The intent of the parties is that the meaning of the term "minerals" as utilized, shall be in accordance with that set forth in *Reed v. Wylie*, 597 S.W.2d 743 (Tex. 1980).

The term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

This conveyance is subject to the following:

(All of those Exceptions from Coverage found on Schedule B of the Owners Title Policy to which referenced is made for all purposes and incorporated by reference.)

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances in anywise belonging unto Grantee and Grantee's successors and assigns forever; and Grantor does bind Grantor and Grantor's successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or

Exhibit "A" PAGE 1 to SWD

All those certain lots, tracts or parcels of land lying and being situated in the City and County of Denton, State of Texas, and being Lot 4 of Oak Street Terrace, an Addition to the City of Denton, Denton County, Texas, according to the Plat thereof recorded in Volume 407, Page 562, Deed Records, Denton County, Texas. Also known as 108 Bonnie Brae Street.

Exhibit C

Option to Purchase

(Oak Med Park, LLC)

Date: _____, 2014

Seller: John R. Lott, individually, and Oak Med Park, LLC, a series of Opal Estelle Holdings, LLC, a Texas limited liability company

Seller's Address: 14 E. Oakwood Hills Dr., Chandler, Arizona 85248

Buyer: City of Denton, Texas, a Texas home-rule municipal corporation

Buyer's Address: 215 E. McKinney St., Denton, Texas 76201

Property: All that certain tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being all of Lots 5 and 6 of the Whitten Addition, an addition as shown of record in Volume 7, Page 12 of the Plat Records of Denton County, Texas.

Option Fee: \$18,000.00

Expiration Date: December 31, 2014

Contract: Contract of Sale attached as Exhibit A.

Purchase Price: \$632,250.00

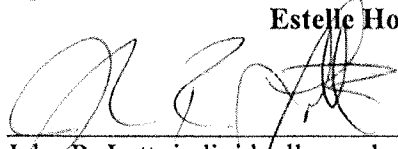
Title Company: Title Resources

Title Company's Address: 525 S. Loop 288, Suite 125
Denton, Texas 76205

In consideration of the Option Fee, Seller grants to Buyer the exclusive and irrevocable option to purchase the Property on the following terms and conditions:

1. Application of Option Fee: The Option Fee will be applied to the Purchase Price.
2. Exercise of Option: To exercise the option, Buyer must execute and deliver to Seller the Contract by the Expiration Date. Within three business days of receiving Buyer's signed Contract, Seller must execute and deliver the Contract to Title Company.
3. Termination of Option: If Buyer does not exercise the option by the Expiration Date, the option terminates, Seller retains the Option Fee, and Buyer will execute and deliver to Seller a recordable release of the option.
4. Seller's Default: If Buyer exercises the option but Seller does not timely execute and deliver the Contract, Buyer has all applicable remedies, including specific performance.
5. Extension of Expiration Date: The Expiration Date may be extended by 60 days if Buyer pays Seller the amount of \$9,000.00 by the Expiration Date.

Optionor/Seller: John R. Lott, individually, and Oak Med Park, LLC, a series of Opal Estelle Holdings, LLC, a Texas limited liability company



John R. Lott, individually, and as manager of Opal Estelle Holdings, LLC, a Texas series limited liability company

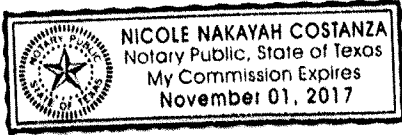
Optionee/Buyer: City of Denton, Texas

George Campbell, City Manager

Acknowledgments

State of Texas §
Denton County §

This instrument was acknowledged before me on August 28, 2014,
by John R. Lott, individually, and as manager of Opal Estelle Holdings, LLC, a Texas series
limited liability company, on behalf of Opal Estelle Holdings, LLC.



Nicole Nakayah Costanza
Notary Public, State of Texas

State of Texas §
Denton County §

This instrument was acknowledged before me on _____, 2014,
by George Campbell, City Manager of the City of Denton, Texas, a Texas home-rule municipal
corporation, on behalf of the City of Denton, Texas.

Notary Public, State of Texas

After recording, return to:

City of Denton - Real Estate Division
901A Texas St.
Denton, Texas 76210

EXHIBIT A TO OPTION AGREEMENT

CONTRACT OF SALE

NOTICE

YOU, AS OWNER OF THE PROPERTY (AS DEFINED BELOW), HAVE THE RIGHT TO: (1) DISCUSS ANY OFFER OR AGREEMENT REGARDING THE CITY OF DENTON'S ACQUISITION OF THE PROPERTY WITH OTHERS; OR (2) KEEP THE OFFER OR AGREEMENT CONFIDENTIAL, UNLESS THE OFFER OR AGREEMENT IS SUBJECT TO CHAPTER 552, GOVERNMENT CODE.

This Contract of Sale (the "Contract") is made this _____ day of _____, 2014, between Seller, JOHN R. LOTT, individually, and OAK MED PARK, LLC, a series of OPAL ESTELLE HOLDING, LLC, Texas series limited liability company, and Buyer, the City of Denton, Texas, a Texas home rule municipal corporation. The Effective Date of this Contract is the date of execution of the same by the Buyer.

RECITALS

WHEREAS, Seller owns that certain tract of land being more particularly described on Exhibit "A" attached, being located in Denton County, Texas (the "Land"); and

WHEREAS, Seller wants to sell to Buyer, and Buyer wants to buy from Seller, the Land, together with any and all rights or interests of Seller in and to adjacent streets, alleys and rights of way and together with all and singular the improvements and fixtures thereon and all other rights and appurtenances to the Land (collectively, the "Property").

ARTICLE I SALE OF PROPERTY

For the consideration set forth, and upon the terms, conditions and provisions contained, and subject to the reservations, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property.

Seller, subject to the limitation of such reservation made, shall reserve, for itself, its successors and assigns all oil, gas and other minerals in, on and under and that may be produced from the Property. Seller, its successors and assigns shall not have the right to use or access the surface of the Property, in any way, manner or form, in connection with or related to the reserved oil, gas, and other minerals and/or related to exploration and/or production of the oil, gas and other minerals reserved, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well

bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas and other minerals, and/or related to the exploration or production of same.

The term "minerals" shall include oil, gas and all associated hydrocarbons, and shall exclude (i) all substances (except oil, gas and all associated hydrocarbons) that any reasonable extraction, mining or other exploration and/or production method, operation, process or procedure would consume, deplete or destroy the surface of the Property; and (ii) all substances (except oil and gas) which are at or near the surface of the Property. The intent of the parties is that the meaning of the term "minerals" as utilized, shall be in accordance with that set forth in *Reed v. Wylie*, 597 S.W.2d 743 (Tex. 1980).

The term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

ARTICLE II

PURCHASE PRICE AND EARNEST MONEY

2.01 Purchase Price. The Purchase Price to be paid to Seller for the Property is the sum of SIX HUNDRED THIRTY-TWO THOUSAND TWO HUNDRED FIFTY and NO/100 US Dollars (\$632,250.00) (the "Purchase Price").

2.02 Earnest Money. Buyer shall deposit the sum of One Thousand and No/100 Dollars (\$1,000.⁰⁰), as Earnest Money with Title Resources, LLC, 525 South Loop 288, Suite 125, Denton, Texas, 76205, ("Title Company"), as escrow agent, within seven (7) calendar days of the Effective Date. All interest earned thereon shall become part of the Earnest Money and shall be applied or disposed of in the same manner as the original Earnest Money deposit, as provided in this Contract. If the purchase contemplated is consummated in accordance with the terms and the provisions of this Contract, the Earnest Money, together with all interest earned thereon, shall be applied to the Purchase Price at Closing. In all other events, the Earnest Money, and the interest accrued thereon, shall be disposed of by the Title Company as provided in this Contract.

2.03 Independent Contract Consideration. Within seven (7) calendar days after the Effective Date, Buyer shall deliver to the Title Company, payable to and for the benefit of Seller, a check in the amount of One Hundred and No/100 Dollars (\$100.⁰⁰) (the "Independent Contract Consideration"), which amount the parties acknowledge and agree has been bargained for and agreed to as consideration for Seller's execution and delivery of the Contract. The Independent Contract Consideration is in addition to, and independent of any other consideration or payment provided in this Contract, is non-refundable, and shall be retained by Seller notwithstanding any other provision of this Contract.

ARTICLE III
TITLE AND SURVEY

3.01 Title Commitment.

- (a) Within twenty (20) calendar days after the Effective Date, Seller shall cause to be furnished to Buyer a current Commitment for Title Insurance (the "Title Commitment") for the Property, issued by Title Company. The Title Commitment shall set forth the state of title to the Property, including a list of liens, mortgages, security interests, encumbrances, pledges, assignments, claims, charges, leases (surface, space, mineral, or otherwise), conditions, restrictions, options, severed mineral or royalty interests, conditional sales contracts, rights of first refusal, restrictive covenants, exceptions, easements (temporary or permanent), rights-of-way, encroachments, or any other outstanding claims, interests, estates or equities of any nature (each of which are referred to as an "Exception").
- (b) Along with the Title Commitment, Seller shall also cause to be delivered to Buyer, at Buyer's sole cost and expense, true and correct copies of all instruments that create or evidence Exceptions (the "Exception Documents"), including those described in the Title Commitment as exceptions to which the conveyance will be subject and/or which are required to be released or cured at or prior to Closing.

3.02 Survey. Within thirty (30) calendar days after the Effective Date, Seller shall cause to be prepared at Buyer's expense, a current on the ground survey of the Property (the "Survey"). The contents of the Survey shall be prepared by a surveyor selected by Buyer and shall include the matters prescribed by Buyer, which may include but not be limited to, a depiction of the location of all roads, streets, easements and rights of way, both on and adjoining the Property, water courses, 100 year flood plain, fences and improvements and structures of any kind. The Survey shall describe the size of the Property, in acres, and contain a metes and bounds description thereof. Seller shall furnish or cause to be furnished any affidavits, certificates, assurances, and/or resolutions as required by the Title Company in order to amend the survey exception as required by **Section 3.05** below. The description of the Property as set forth in the Survey, at the Buyer's election, shall be used to describe the Property in the deed to convey the Property to Buyer and shall be the description set forth in the Title Policy.

3.03 Review of Title Commitment, Survey and Exception Documents. Buyer shall have a period of ten (10) calendar days (the "Title Review Period") commencing with the day Buyer receives the last of the Title Commitment, the Survey, and the Exception Documents, in which to give written notice to Seller, specifying Buyer's objections to one or more of the items ("Objections"), if any. All items set forth in the Schedule C of the Title Commitment, and all other items set forth in the Title Commitment which are required to be released or otherwise satisfied at or prior to Closing, shall be deemed to be Objections without any action by Buyer.

3.04 Seller's Obligation to Cure; Buyer's Right to Terminate. The Seller shall, within ten (10) calendar days after Seller is provided notice of Objections, either satisfy the Objections at Seller's sole cost and expense or promptly notify Buyer in writing of the Objections that Seller cannot or will not satisfy at Seller's expense. Notwithstanding the foregoing sentence, Seller shall, in any event, be obligated to cure those Objections or Exceptions that have been voluntarily placed on or against the Property by Seller after the Effective Date. If Seller fails or refuses to satisfy any Objections that Seller is not obligated to cure within the allowed ten (10) calendar day period, then Buyer has the option of either:

- (a) waiving the unsatisfied Objections by, and only by, notice in writing to Seller prior to Closing, in which event those Objections shall become Permitted Exceptions, or
- (b) terminating this Contract by notice in writing prior to Closing and receiving back the Earnest Money, in which latter event Seller and Buyer shall have no further obligations, one to the other, with respect to the subject matter of this Contract.

3.05 Title Policy. At Closing, Seller, at Buyer's sole cost and expense, shall cause a standard Texas Owner's Policy of Title Insurance ("Title Policy") to be furnished to Buyer. The Title Policy shall be issued by the Title Company, in the amount of the Purchase Price and insuring that Buyer has indefeasible fee simple title to the Property, subject only to the Permitted Exceptions. The Title Policy may contain only the Permitted Exceptions and shall contain no other exceptions to title, with the standard printed or common exceptions amended or deleted as follows:

- (a) survey exception must be amended if required by Buyer to read "shortages in area" only (although Schedule C of the Title Commitment may condition amendment on the presentation of an acceptable survey and payment, to be borne solely by Buyer, of any required additional premium);
- (b) no exception will be permitted for "visible and apparent easements" or words to that effect (although reference may be made to any specific easement or use shown on the Survey, if a Permitted Exception);
- (c) no exception will be permitted for "rights of parties in possession";
- (d) no liens will be shown on Schedule B.

Notwithstanding the enumeration of the following exceptions, amendments and/or deletions, Buyer may object to any Exception it deems material, in its sole discretion.

ARTICLE IV
FEASIBILITY REVIEW PERIOD

4.01 Review Period. Any term or provision of this Contract notwithstanding, the obligations of Buyer specified in this Contract are wholly conditioned on Buyer's having determined, in Buyer's sole and absolute discretion, during the period commencing with the Effective Date of this Contract and ending sixty (60) calendar days thereafter (the "Absolute Review Period"), based on such tests, examinations, studies, investigations and inspections of the Property the Buyer deems necessary or desirable, including but not limited to studies or inspections to determine the existence of any environmental hazards or conditions, performed at Buyer's sole cost, that Buyer finds the Property suitable for Buyer's purposes. Buyer is granted the right to conduct engineering studies of the Property, and to conduct a physical inspection of the Property, including inspections that invade the surface and subsurface of the Property. If Buyer determines, in its sole judgment, that the Property is not suitable, for any reason, for Buyer's intended use or purpose, the Buyer may terminate this Contract by written notice to the Seller, as soon as reasonably practicable, but in any event prior to the expiration of the Absolute Review Period, in which case the Earnest Money will be returned to Buyer, and neither Buyer nor Seller shall have any further duties or obligations hereunder. In the event Buyer elects to terminate this Contract pursuant to the terms of this **Article IV, Section 4.01**, Buyer will provide to Seller copies of (i) any and all non-confidential and non-privileged reports and studies obtained by Buyer during the Absolute Review Period; and (ii) the Survey.

ARTICLE V
REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS

5.01 Representations and Warranties of Seller. To induce Buyer to enter into this Contract and consummate the sale and purchase of the Property in accordance with the terms and provisions herewith, Seller represents and warrants to Buyer as of the Effective Date and as of the Closing Date, except where specific reference is made to another date, that:

- (a) The descriptive information concerning the Property set forth in this Contract is complete, accurate, true and correct.
- (b) There are no adverse or other parties in possession of the Property or any part thereof, and no party has been granted any license, lease or other right related to the use or possession of the Property, or any part thereof, except those described in the Leases, as defined in **Article V, Section 5.02(a)**.
- (c) The Seller has good and marketable fee simple title to the Property, subject only to the Permitted Exceptions.
- (d) The Seller has the full right, power, and authority to sell and convey the Property as provided in this Contract and to carry out Seller's obligations hereunder.

- (e) The Seller has not received notice of, and has no other knowledge or information of, any pending or threatened judicial or administrative action, or any action pending or threatened by adjacent landowners or other persons against or affecting the Property.
- (f) The Seller has disclosed to Buyer in writing of any and all facts and circumstances relating to the physical condition of the Property that may materially and adversely affect the Property and operation or intended operation thereof, or any portion thereof, of which Seller has knowledge.
- (g) The Seller has paid all real estate and personal property taxes, assessments, excises, and levies that are presently due, if any, which are against or are related to the Property, or will be due as of the Closing, and the Property will be subject to no such liens.
- (h) The Seller shall convey the Property free and clear of all debts, liens and encumbrances.
- (i) Seller has not contracted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction or taken any action which would result in any real estate broker commissions or finder's fee or other fees payable to any other party with respect to the transactions contemplated by this Contract.
- (j) To the best of Seller's knowledge, there has not occurred the disposal or release of any Hazardous Substance to, on or from the Property.

As used in this Contract, "Hazardous Substance" means and includes all hazardous and toxic substances, waste or materials, chemicals, and any pollutant or contaminant, including without limitation, PCB's, asbestos, asbestos-containing material, petroleum products and raw materials, that are included under or regulated by any Environmental Law or that would or may pose a health, safety or environmental hazard.

As used in this Contract, "Environmental Law" means and includes all federal, state, and local statutes, ordinances, regulations and rules presently in force or hereafter enacted relating to environmental quality, contamination, and clean-up of Hazardous Substances, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), as amended, Toxic Substance Control Act, 15 U.S.C. 2601, et seq., and state superlien and environmental clean-up statutes and all rules and regulations presently or hereafter promulgated under or related to said statutes, as amended.

- (k) All Leases, as defined in Article V, Section 5.02(a), shall have expired or otherwise terminated and any and all tenants or parties occupying the Property pursuant to the Leases shall have permanently abandoned and vacated the Property on or before the date of Closing.
- (l) The Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

5.02 Covenants and Agreements of Seller. Seller covenants and agrees with Buyer as follows:

- (a) Unless stated otherwise, within ten (10) calendar days after the Effective Date, Seller, at Seller's sole cost and expense, shall deliver to Buyer, with respect to the Property, true, correct, and complete copies of the following:
 - (i) All lease agreements and/or occupancy agreements and/or licenses of any kind or nature (if oral, Seller shall provide to Buyer in writing all material terms thereof) relating to the possession of the Property, or any part thereof, including any and all modifications, supplements, and amendments t (the "Leases").
 - (ii) All environmental audits, soil tests and engineering and feasibility reports, including any and all modifications, supplements and amendments t, with respect to the Property that Seller possesses or has the right to receive.
- (b) From the Effective Date until the date of Closing or earlier termination of this Contract, Seller shall:
 - (i) Not enter into any written or oral contract, lease, easement or right of way agreement, conveyance or any other agreement of any kind with respect to, or affecting, the Property that will not be fully performed on or before the Closing or would be binding on Buyer or the Property after the date of Closing.
 - (ii) Advise the Buyer promptly of any litigation, arbitration, or administrative hearing concerning or affecting the Property.
 - (iii) Not take, or omit to take, any action that would result in a violation of the representations, warranties, covenants, and agreements of Seller.
 - (iv) Not sell, assign, lease or convey any right, title or interest whatsoever in or to the Property, or create, grant or permit to be attached or perfected, any lien, encumbrance, or charge thereon.
- (c) Seller shall indemnify and hold Buyer harmless, to the extent permitted by law, from all loss, liability, and expense, including, without limitation, reasonable

attorneys' fees, arising or incurred as a result of any liens or claims resulting from labor or materials furnished to the Property under any written or oral contracts arising or entered into prior to Closing.

5.03 Survival Beyond Closing. Notwithstanding anything to the contrary contained in this Contract, the representations, warranties, covenants and agreements of Seller contained in this Contract shall survive the Closing, and shall not, in any circumstance, be merged with the Special Warranty Deed, as described in **Article VII, Section 7.02(a)**.

ARTICLE VI

CONDITIONS PRECEDENT TO PERFORMANCE

6.01 Performance of Seller's Obligations. Buyer is not obligated to perform under this Contract unless, within the designated time periods, all of the following shall have occurred:

- (a) Seller has performed, furnished, or caused to be furnished to Buyer all items required to be so performed or furnished under other sections of this Contract; and
- (b) Seller cures or Buyer waives in writing, within the time periods specified in **Article III**, all of Buyer's objections made in accordance with **Article III**.

6.02 Breach of Seller's Representations, Warranties, Covenants and Agreements. Buyer is not obligated to perform under this Contract unless all representations, warranties, covenants and agreements of Seller contained in this Contract are true and correct or have been performed, as applicable, as of the Closing Date, except where specific reference is made to another date.

6.03 Adverse Change. Buyer is not obligated to perform under this Contract, if on the date of Closing, any portion of the Property has been condemned by an entity other than Buyer, or is the subject of condemnation, eminent domain, or other material proceeding initiated by an entity other than Buyer, or the Property, or any part thereof, has been materially or adversely impaired in any manner.

6.04 Review Period. Buyer is not obligated to perform under this Contract if Buyer delivers notice to Seller pursuant to **Article IV, Section 4.01** that Buyer has determined that the Property is unsuitable to or for Buyer's purposes.

6.05 Buyer's Right to Waive Conditions Precedent. Notwithstanding anything contained in this Contract to the contrary, Buyer may, at Buyer's option, elect to waive any of the conditions precedent to the performance of Buyer's obligations under this Contract by giving to the Seller, at any time prior to Closing, a written waiver specifying the waived condition precedent.

6.06 Buyer's Termination if Conditions Precedent Not Satisfied or Waived. If any of the conditions precedent to the performance of Buyer's obligations under this Contract

have not been satisfied by Seller or waived by the Buyer, the Buyer may, by giving written notice to Seller, terminate this Contract. On Buyer's termination, the Earnest Money shall be immediately returned to Buyer by the Title Company. The Seller shall, on written request from Buyer, promptly issue the instructions necessary to instruct the Title Company to return to Buyer the Earnest Money and, thereafter, except as otherwise provided in this Contract, Buyer and Seller shall have no further obligations under this Contract, one to the other.

ARTICLE VII

CLOSING

7.01 Date and Place of Closing. The Closing shall take place in the offices of the Title Company and shall be accomplished through an escrow to be established with the Title Company, as escrowee. The Closing Date shall be on or before 5:00 p.m. seventy five (75) calendar days after the Effective Date, unless otherwise mutually agreed upon by Buyer and Seller.

7.02 Items to be Delivered at the Closing.

- (a) **Seller.** At the Closing, Seller shall deliver or cause to be delivered to Buyer or the Title Company, at the expense of the party designated, the following items:
- (i) The Title Policy, in the form specified in **Article III, Section 3.05**;
 - (ii) The Special Warranty Deed, substantially in the form as attached as Attachment "1", subject only to the Permitted Exceptions, if any, duly executed by Seller and acknowledged;
 - (iii) Evidence of Seller's authority to close this transaction; and
 - (iv) Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.
- (b) **Buyer.** At the Closing, Buyer shall deliver to Seller or the Title Company, the following items:
- (i) The sum required by **Article II, Section 2.01**, less the Earnest Money and interest earned thereon, in the form of a check or cashier's check or other immediately available funds;
 - (ii) Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

7.03 Adjustments at Closing. Notwithstanding anything to the contrary contained in this Contract and without limiting the general application of the provisions of **Section 5.03**, above, the provisions of this **Article VII, Section 7.03** shall survive the Closing.

Ad valorem taxes relating to the Property for the calendar year in which the Closing shall occur shall be prorated between Seller and Buyer as of the Closing Date. If the actual amount of taxes for the calendar year in which the Closing shall occur is not known as of the Closing Date, the proration at Closing shall be based on the amount of taxes due and payable with respect to the Property for the preceding calendar year. As soon as the amount of taxes levied against the Property for the calendar year in which Closing shall occur is known, Seller and Buyer shall readjust in cash the amount of taxes to be paid by each party with the result that Seller shall pay for those taxes attributable to the period of time prior to the Closing Date (including, but not limited to, subsequent assessments for prior years due to change of land usage or ownership occurring prior to the date of Closing) and Buyer shall pay for those taxes attributable to the period of time commencing with the Closing Date.

7.04 Possession at Closing. Possession of the Property shall be delivered to Buyer at Closing.

7.05 Costs of Closing. Each party is responsible for paying the legal fees of its counsel, in negotiating, preparing, and closing the transaction contemplated by this Contract. Buyer will be responsible for paying fees, costs and expenses for the closing of this transaction.

ARTICLE VIII

DEFAULTS AND REMEDIES

8.01 Seller's Defaults and Buyer's Remedies.

- (a) **Seller's Defaults.** Seller is in default under this Contract on the occurrence of any one or more of the following events:
- (i) Any of Seller's warranties or representations contained in this Contract are untrue on the Closing Date; or
 - (ii) Seller fails to meet, comply with or perform any covenant, agreement, condition precedent or obligation on Seller's part required within the time limits and in the manner required in this Contract; or
 - (iii) Seller fails to deliver at Closing, the items specified in **Article VII, Section 7.02(a)** of this Contract for any reason other than a default by Buyer or termination of this Contract by Buyer pursuant to the terms hereof prior to Closing.
- (b) **Buyer's Remedies.** If Seller is in default under this Contract, Buyer as Buyer's sole and exclusive remedies for the default, may, at Buyer's sole option, do any of the following:
- (i) Terminate this Contract by written notice delivered to Seller in which

event the Buyer shall be entitled to a return of the Earnest Money, and Seller shall, promptly on written request from Buyer, execute and deliver any documents necessary to cause the Title Company to return to Buyer the Earnest Money;

- (ii) Enforce specific performance of this Contract against Seller, requiring Seller to convey the Property to Buyer subject to no liens, encumbrances, exceptions, and conditions other than those shown on the Title Commitment, whereupon Buyer shall waive title objections, if any, and accept such title without reduction in Purchase Price on account of title defects and shall be entitled to assert any rights for damages based on Seller's representations, warranties and obligations that are not waived by Buyer by its acceptance of Seller's title; and
- (iii) Seek other recourse or relief as may be available to Buyer at or by law, equity, contract or otherwise.

8.02 Buyer's Default and Seller's Remedies.

- (a) **Buyer's Default.** Buyer is in default under this Contract if Buyer fails to deliver at Closing, the items specified in **Article VII, Section 7.02(b)** of this Contract for any reason other than a default by Seller under this Contract or termination of this Contract by Buyer pursuant to the terms hereof prior to Closing.
- (b) **Seller's Remedy.** If Buyer is in default under this Contract, Seller, as Seller's sole and exclusive remedies for the default, may, at Seller's sole option, do either one of the following:
 - (i) Terminate this Contract by written notice delivered to Buyer in which event the Seller shall be entitled to a return of the Earnest Money, and Buyer shall, promptly on written request from Seller, execute and deliver any documents necessary to cause the Title Company to return to Seller the Earnest Money; or
 - (ii) Enforce specific performance of this Contract against Buyer.

ARTICLE IX MISCELLANEOUS

9.01 Notice. All notices, demands, requests, and other communications required hereunder shall be in writing, delivered, unless expressly provided otherwise in this Contract, by telephonic facsimile, by hand delivery or by United States Mail, and shall be deemed to be delivered, upon the earlier to occur of (a) the date provided if provided by telephonic facsimile or hand delivery, and (b) the date of the deposit of, in a regularly maintained receptacle for the United States Mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

SELLER:

Fax _____

BUYER:

City of Denton
Paul Williamson
Real Estate and Capital Support
901-A Texas St.
Denton, Texas 76209
Fax: (940) 349-8951

Copies to:

For Seller:

Fax _____

For Buyer:

Larry Collister, Deputy City Attorney
City of Denton – Legal Department
215 E. McKinney St.
Denton, Texas 76201
Fax: (940) 382-7923

9.02 Governing Law and Venue. This Contract is being executed and delivered and is intended to be performed in the State of Texas, the laws of Texas governing the validity, construction, enforcement and interpretation of this Contract. THIS CONTRACT IS PERFORMABLE IN, AND THE EXCLUSIVE VENUE IS, IN DENTON COUNTY, TEXAS.

9.03 Entirety and Amendments. This Contract embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, related to the Property, and may be amended or supplemented only in writing executed by the party against whom enforcement is sought.

9.04 Parties Bound. This Contract is binding upon and inures to the benefit of Seller and Buyer, and their respective successors and assigns. If requested by Buyer, Seller agrees to execute, acknowledge and record a memorandum of this Contract in the Real Property Records of Denton County, Texas, imparting notice of this Contract to the public.

9.05 Risk of Loss. If any damage or destruction to the Property shall occur prior to Closing, or if any condemnation or any eminent domain proceedings are threatened or initiated by an entity or party other than Buyer that might result in the taking of any portion of the Property, Buyer may, at Buyer's option, do any of the following:

- (a) Terminate this Contract and withdraw from this transaction without cost, obligation or liability, in which case the Earnest Money shall be immediately returned to Buyer; or

- (b) Consummate this Contract, in which case Buyer, with respect to the Property, shall be entitled to receive any (i) in the case of damage or destruction, all insurance proceeds; and (ii) in the case of eminent domain, proceeds paid for the Property related to the eminent domain proceedings.

Buyer shall have a period of up to ten (10) calendar days after receipt of written notification from Seller on the final settlement of all condemnation proceedings or insurance claims related to damage or destruction of any improvement located on the Property, in which to make Buyer's election. In the event Buyer elects to close prior to such final settlement, then the Closing shall take place as provided in **Article VII**, above, and there shall be assigned by Seller to Buyer at Closing all interests of Seller in and to any and all insurance proceeds or condemnation awards which may be payable to Seller on account of such event. In the event Buyer elects to close upon this Contract after final settlement, as described above, Closing shall be held five (5) business days after such final settlement.

9.06 Further Assurances. In addition to the acts and deeds recited in this Contract and contemplated to be performed, executed and/or delivered by Seller and Buyer, Seller and Buyer agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered at the Closing or after the Closing, any further deeds, acts, and assurances as are reasonably necessary to consummate the transactions contemplated. Notwithstanding anything to the contrary contained in this Contract and without limiting the general application of the provisions of **Section 5.03**, above, the provisions of this **Article IX**, **Section 9.06** shall survive Closing.

9.07 Time is of the Essence. It is expressly agreed between Buyer and Seller that time is of the essence with respect to this Contract.

9.08 Exhibits. The Exhibits which are referenced in, and attached to this Contract, are incorporated in and made a part of, this Contract for all purposes.

9.09 Delegation of Authority. Authority to take any actions that are to be, or may be, taken by Buyer under this Contract, including without limitation, adjustment of the Closing Date, are delegated by Buyer, pursuant to action by the City Council of Denton, Texas, to Frank Payne, P.E., City Engineer of Buyer, or his designee.

9.10 Contract Execution. This Contract of Sale may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any of the parties may execute this Agreement by signing any such counterpart.

9.11 Business Days. If the Closing Date or the day of performance required or permitted under this Contract falls on a Saturday, Sunday or Denton County holiday, then the Closing Date or the date of such performance, as the case may be, shall be the next following regular business day.

9.12 Removal of Pecan Trees from Property. Seller has one-hundred and eighty (180) days after closing to remove any pecans tree located on the Property.

SELLER:

JOHN R. LOTT, Individually, and as manager of
OPAL ESTELLE HOLDINGS, LLC, a Texas series
limited liability company

Executed by Seller on the _____ day of _____, 2014.

BUYER:

By: _____
GEORGE C. CAMPBELL, CITY MANAGER

Executed by Buyer on the _____ day of _____, 2014.

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: _____

RECEIPT OF AGREEMENT BY TITLE COMPANY

By its execution below, Title Company acknowledges receipt of an executed copy of this Contract. Title Company agrees to comply with, and be bound by, the terms and provisions of this Contract and to perform its duties pursuant to the provisions of this Contract and comply with Section 6045(e) of the Internal Revenue Code of 1986, as amended from time to time, and as further set forth in any regulations or forms promulgated thereunder.

TITLE COMPANY:

Title Resources, LLC
525 South Loop 288, Suite 125
Denton, Texas 76205
Phone: (940) 381-1006
Fax: (940) 898-0121

By: _____

Printed Name: _____

Title: _____

Contract receipt date: _____, 2014

EXHIBIT "A"
TO
CONTRACT OF SALE

Legal Description and Depiction of Property

All that certain tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being all of Lots 5 and 6 of the Whitten Addition, an addition as shown of record in Volume 7, Page 12 of the Plat Records of Denton County, Texas.

ATTACHMENT "1"
TO
CONTRACT OF SALE

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.

SPECIAL WARRANTY DEED

STATE OF TEXAS §

COUNTY OF DENTON § KNOW ALL MEN BY THESE PRESENTS

That JOHN R. LOTT, individually, and OAK MED PARK, LCC, a series of OPAL ESTELLE HOLDINGS, LLC, a Texas series limited liability company ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration to Grantor in hand paid by the City of Denton, Texas, a Texas home rule municipal corporation ("Grantee"), 215 E. McKinney, Denton, Texas 76201, the receipt and sufficiency of which is acknowledged, subject to the reservations set forth below, has GRANTED, SOLD and CONVEYED, and does GRANT, SELL and CONVEY, unto Grantee all the real property in Denton County, Texas being particularly described on Exhibit "A" attached and made a part for all purposes, and being located in Denton County, Texas, together with any and all rights or interests of Grantor in and to adjacent streets, alleys and rights of way and together with all and singular the improvements and fixtures thereon and all other rights and appurtenances (collectively, the "Property").

Grantor, subject to the limitation of such reservation made, reserves, for itself, its successors and assigns all oil, gas and other minerals in, on and under and that may be produced from the Property. Grantor, its successors and assigns shall not have the right to use or access the surface of the Property, in any way, manner or form, in connection

with or related to the reserved oil, gas, and other minerals and/or related to exploration and/or production of the oil, gas and other minerals reserved, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas and other minerals, and/or related to the exploration or production of same.

The term "minerals" shall include oil, gas and all associated hydrocarbons, and shall exclude (i) all substances (except oil, gas and all associated hydrocarbons) that any reasonable extraction, mining or other exploration and/or production method, operation, process or procedure would consume, deplete or destroy the surface of the Property; and (ii) all substances (except oil and gas) which are at or near the surface of the Property. The intent of the parties is that the meaning of the term "minerals" as utilized, shall be in accordance with that set forth in *Reed v. Wylie*, 597 S.W.2d 743 (Tex. 1980).

The term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

This conveyance is subject to the following:

(All of those Exceptions from Coverage found on Schedule B of the Owners Title Policy to which referenced is made for all purposes and incorporated by reference.)

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances in anywise belonging unto Grantee and Grantee's successors and assigns forever; and Grantor does bind Grantor and Grantor's successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or

Exhibit "A" PAGE 1 to SWD

All that certain tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being all of Lots 5 and 6 of the Whitten Addition, an addition as shown of record in Volume 7, Page 12 of the Plat Records of Denton County, Texas.

Exhibit D

Option to Purchase

(Hickory Med, LLC)

Date: _____, 2014

Seller: John R. Lott, individually, and Hickory Med, LLC, a series of Opal Estelle Holdings, LLC, a Texas limited liability company

Seller's Address: 14 E. Oakwood Hills Dr., Chandler, Arizona 85248

Buyer: City of Denton, Texas, a Texas home-rule municipal corporation

Buyer's Address: 215 E. McKinney St., Denton, Texas 76201

Property: All that certain tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being all of Lots 3 and 4 of the Whitten Addition, an addition as shown of record in Volume 7, Page 12 of the Plat Records of Denton County, Texas.

Option Fee: \$18,000.00

Expiration Date: December 31, 2014

Contract: Contract of Sale attached as Exhibit A.

Purchase Price: \$632,250.00

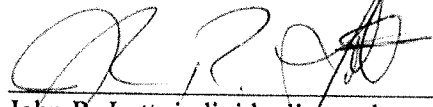
Title Company: Title Resources

Title Company's Address: 525 S. Loop 288, Suite 125
Denton, Texas 76205

In consideration of the Option Fee, Seller grants to Buyer the exclusive and irrevocable option to purchase the Property on the following terms and conditions:

1. Application of Option Fee: The Option Fee will be applied to the Purchase Price.
2. Exercise of Option: To exercise the option, Buyer must execute and deliver to Seller the Contract by the Expiration Date. Within three business days of receiving Buyer's signed Contract, Seller must execute and deliver the Contract to Title Company.
3. Termination of Option: If Buyer does not exercise the option by the Expiration Date, the option terminates, Seller retains the Option Fee, and Buyer will execute and deliver to Seller a recordable release of the option.
4. Seller's Default: If Buyer exercises the option but Seller does not timely execute and deliver the Contract, Buyer has all applicable remedies, including specific performance.
5. Extension of Expiration Date: The Expiration Date may be extended by 60 days if Buyer pays Seller the amount of \$9,000.00 by the Expiration Date.

Optionor/Seller: John R. Lott, individually, and Hickory Med, LLC, a series of Opal Estelle Holdings, LLC, a Texas limited liability company



John R. Lott, individually, and as manager of Opal Estelle Holdings, LLC, a Texas series limited liability company

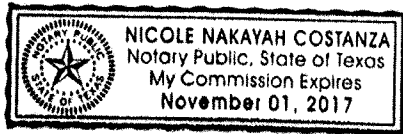
Optionee/Buyer: City of Denton, Texas

George Campbell, City Manager

Acknowledgments

State of Texas §
Denton County §

This instrument was acknowledged before me on August 28, 2014,
by John R. Lott, individually, and as manager of Opal Estelle Holdings, LLC, a Texas series
limited liability company, on behalf of Opal Estelle Holdings, LLC.



Nicole Nakayah Costanza
Notary Public, State of Texas

State of Texas §
Denton County §

This instrument was acknowledged before me on _____, 2014,
by George Campbell, City Manager of the City of Denton, Texas, a Texas home-rule municipal
corporation, on behalf of the City of Denton, Texas.

Notary Public, State of Texas

After recording, return to:

City of Denton - Real Estate Division
901A Texas St.
Denton, Texas 76210

EXHIBIT A TO OPTION AGREEMENT

CONTRACT OF SALE

NOTICE

YOU, AS OWNER OF THE PROPERTY (AS DEFINED BELOW), HAVE THE RIGHT TO: (1) DISCUSS ANY OFFER OR AGREEMENT REGARDING THE CITY OF DENTON'S ACQUISITION OF THE PROPERTY WITH OTHERS; OR (2) KEEP THE OFFER OR AGREEMENT CONFIDENTIAL, UNLESS THE OFFER OR AGREEMENT IS SUBJECT TO CHAPTER 552, GOVERNMENT CODE.

This Contract of Sale (the "Contract") is made this _____ day of _____, 2014, between Seller, JOHN R. LOTT, individually, and as manager of HICKORY MED, LLC, a series of OPAL ESTELLE HOLDINGS, LLC, a Texas series limited liability company, and Buyer, the City of Denton, Texas, a Texas home rule municipal corporation. The Effective Date of this Contract is the date of execution of the same by the Buyer.

RECITALS

WHEREAS, Seller owns that certain tract of land being more particularly described on Exhibit "A" attached, being located in Denton County, Texas (the "Land"); and

WHEREAS, Seller wants to sell to Buyer, and Buyer wants to buy from Seller, the Land, together with any and all rights or interests of Seller in and to adjacent streets, alleys and rights of way and together with all and singular the improvements and fixtures thereon and all other rights and appurtenances to the Land (collectively, the "Property").

ARTICLE I SALE OF PROPERTY

For the consideration set forth, and upon the terms, conditions and provisions contained, and subject to the reservations, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property.

Seller, subject to the limitation of such reservation made, shall reserve, for itself, its successors and assigns all oil, gas and other minerals in, on and under and that may be produced from the Property. Seller, its successors and assigns shall not have the right to use or access the surface of the Property, in any way, manner or form, in connection with or related to the reserved oil, gas, and other minerals and/or related to exploration and/or production of the oil, gas and other minerals reserved, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic

activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas and other minerals, and/or related to the exploration or production of same.

The term "minerals" shall include oil, gas and all associated hydrocarbons, and shall exclude (i) all substances (except oil, gas and all associated hydrocarbons) that any reasonable extraction, mining or other exploration and/or production method, operation, process or procedure would consume, deplete or destroy the surface of the Property; and (ii) all substances (except oil and gas) which are at or near the surface of the Property. The intent of the parties is that the meaning of the term "minerals" as utilized, shall be in accordance with that set forth in *Reed v. Wylie*, 597 S.W.2d 743 (Tex. 1980).

The term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

ARTICLE II

PURCHASE PRICE AND EARNEST MONEY

2.01 Purchase Price. The Purchase Price to be paid to Seller for the Property is the sum of SIX HUNDRED THIRTY-TWO THOUSAND TWO HUNDRED FIFTY and NO/100 US Dollars (\$632,250.00) (the "Purchase Price").

2.02 Earnest Money. Buyer shall deposit the sum of One Thousand and No/100 Dollars (\$1,000.00), as Earnest Money with Title Resources, LLC, 525 South Loop 288, Suite 125, Denton, Texas, 76205, ("Title Company"), as escrow agent, within seven (7) calendar days of the Effective Date. All interest earned thereon shall become part of the Earnest Money and shall be applied or disposed of in the same manner as the original Earnest Money deposit, as provided in this Contract. If the purchase contemplated is consummated in accordance with the terms and the provisions of this Contract, the Earnest Money, together with all interest earned thereon, shall be applied to the Purchase Price at Closing. In all other events, the Earnest Money, and the interest accrued thereon, shall be disposed of by the Title Company as provided in this Contract.

2.03 Independent Contract Consideration. Within seven (7) calendar days after the Effective Date, Buyer shall deliver to the Title Company, payable to and for the benefit of Seller, a check in the amount of One Hundred and No/100 Dollars (\$100.00) (the "Independent Contract Consideration"), which amount the parties acknowledge and agree has been bargained for and agreed to as consideration for Seller's execution and delivery of the Contract. The Independent Contract Consideration is in addition to, and independent of any other consideration or payment provided in this Contract, is non-refundable, and shall be retained by Seller notwithstanding any other provision of this Contract.

ARTICLE III
TITLE AND SURVEY

3.01 Title Commitment.

- (a) Within twenty (20) calendar days after the Effective Date, Seller shall cause to be furnished to Buyer a current Commitment for Title Insurance (the "Title Commitment") for the Property, issued by Title Company. The Title Commitment shall set forth the state of title to the Property, including a list of liens, mortgages, security interests, encumbrances, pledges, assignments, claims, charges, leases (surface, space, mineral, or otherwise), conditions, restrictions, options, severed mineral or royalty interests, conditional sales contracts, rights of first refusal, restrictive covenants, exceptions, easements (temporary or permanent), rights-of-way, encroachments, or any other outstanding claims, interests, estates or equities of any nature (each of which are referred to as an "Exception").
- (b) Along with the Title Commitment, Seller shall also cause to be delivered to Buyer, at Buyer's sole cost and expense, true and correct copies of all instruments that create or evidence Exceptions (the "Exception Documents"), including those described in the Title Commitment as exceptions to which the conveyance will be subject and/or which are required to be released or cured at or prior to Closing.

3.02 Survey. Within thirty (30) calendar days after the Effective Date, Seller shall cause to be prepared at Buyer's expense, a current on the ground survey of the Property (the "Survey"). The contents of the Survey shall be prepared by a surveyor selected by Buyer and shall include the matters prescribed by Buyer, which may include but not be limited to, a depiction of the location of all roads, streets, easements and rights of way, both on and adjoining the Property, water courses, 100 year flood plain, fences and improvements and structures of any kind. The Survey shall describe the size of the Property, in acres, and contain a metes and bounds description thereof. Seller shall furnish or cause to be furnished any affidavits, certificates, assurances, and/or resolutions as required by the Title Company in order to amend the survey exception as required by **Section 3.05** below. The description of the Property as set forth in the Survey, at the Buyer's election, shall be used to describe the Property in the deed to convey the Property to Buyer and shall be the description set forth in the Title Policy.

3.03 Review of Title Commitment, Survey and Exception Documents. Buyer shall have a period of ten (10) calendar days (the "Title Review Period") commencing with the day Buyer receives the last of the Title Commitment, the Survey, and the Exception Documents, in which to give written notice to Seller, specifying Buyer's objections to one or more of the items ("Objections"), if any. All items set forth in the Schedule C of the Title Commitment, and all other items set forth in the Title Commitment which are required to be released or otherwise satisfied at or prior to Closing, shall be deemed to be Objections without any action by Buyer.

3.04 Seller's Obligation to Cure; Buyer's Right to Terminate. The Seller shall, within ten (10) calendar days after Seller is provided notice of Objections, either satisfy the Objections at Seller's sole cost and expense or promptly notify Buyer in writing of the Objections that Seller cannot or will not satisfy at Seller's expense. Notwithstanding the foregoing sentence, Seller shall, in any event, be obligated to cure those Objections or Exceptions that have been voluntarily placed on or against the Property by Seller after the Effective Date. If Seller fails or refuses to satisfy any Objections that Seller is not obligated to cure within the allowed ten (10) calendar day period, then Buyer has the option of either:

- (a) waiving the unsatisfied Objections by, and only by, notice in writing to Seller prior to Closing, in which event those Objections shall become Permitted Exceptions, or
- (b) terminating this Contract by notice in writing prior to Closing and receiving back the Earnest Money, in which latter event Seller and Buyer shall have no further obligations, one to the other, with respect to the subject matter of this Contract.

3.05 Title Policy. At Closing, Seller, at Buyer's sole cost and expense, shall cause a standard Texas Owner's Policy of Title Insurance ("Title Policy") to be furnished to Buyer. The Title Policy shall be issued by the Title Company, in the amount of the Purchase Price and insuring that Buyer has indefeasible fee simple title to the Property, subject only to the Permitted Exceptions. The Title Policy may contain only the Permitted Exceptions and shall contain no other exceptions to title, with the standard printed or common exceptions amended or deleted as follows:

- (a) survey exception must be amended if required by Buyer to read "shortages in area" only (although Schedule C of the Title Commitment may condition amendment on the presentation of an acceptable survey and payment, to be borne solely by Buyer, of any required additional premium);
- (b) no exception will be permitted for "visible and apparent easements" or words to that effect (although reference may be made to any specific easement or use shown on the Survey, if a Permitted Exception);
- (c) no exception will be permitted for "rights of parties in possession";
- (d) no liens will be shown on Schedule B.

Notwithstanding the enumeration of the following exceptions, amendments and/or deletions, Buyer may object to any Exception it deems material, in its sole discretion.

ARTICLE IV
FEASIBILITY REVIEW PERIOD

4.01 Review Period. Any term or provision of this Contract notwithstanding, the obligations of Buyer specified in this Contract are wholly conditioned on Buyer's having determined, in Buyer's sole and absolute discretion, during the period commencing with the Effective Date of this Contract and ending sixty (60) calendar days thereafter (the "Absolute Review Period"), based on such tests, examinations, studies, investigations and inspections of the Property the Buyer deems necessary or desirable, including but not limited to studies or inspections to determine the existence of any environmental hazards or conditions, performed at Buyer's sole cost, that Buyer finds the Property suitable for Buyer's purposes. Buyer is granted the right to conduct engineering studies of the Property, and to conduct a physical inspection of the Property, including inspections that invade the surface and subsurface of the Property. If Buyer determines, in its sole judgment, that the Property is not suitable, for any reason, for Buyer's intended use or purpose, the Buyer may terminate this Contract by written notice to the Seller, as soon as reasonably practicable, but in any event prior to the expiration of the Absolute Review Period, in which case the Earnest Money will be returned to Buyer, and neither Buyer nor Seller shall have any further duties or obligations hereunder. In the event Buyer elects to terminate this Contract pursuant to the terms of this **Article IV, Section 4.01**, Buyer will provide to Seller copies of (i) any and all non-confidential and non-privileged reports and studies obtained by Buyer during the Absolute Review Period; and (ii) the Survey.

ARTICLE V
REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS

5.01 Representations and Warranties of Seller. To induce Buyer to enter into this Contract and consummate the sale and purchase of the Property in accordance with the terms and provisions herewith, Seller represents and warrants to Buyer as of the Effective Date and as of the Closing Date, except where specific reference is made to another date, that:

- (a) The descriptive information concerning the Property set forth in this Contract is complete, accurate, true and correct.
- (b) There are no adverse or other parties in possession of the Property or any part thereof, and no party has been granted any license, lease or other right related to the use or possession of the Property, or any part thereof, except those described in the Leases, as defined in **Article V, Section 5.02(a)**.
- (c) The Seller has good and marketable fee simple title to the Property, subject only to the Permitted Exceptions.
- (d) The Seller has the full right, power, and authority to sell and convey the Property as provided in this Contract and to carry out Seller's obligations hereunder.

- (e) The Seller has not received notice of, and has no other knowledge or information of, any pending or threatened judicial or administrative action, or any action pending or threatened by adjacent landowners or other persons against or affecting the Property.
- (f) The Seller has disclosed to Buyer in writing of any and all facts and circumstances relating to the physical condition of the Property that may materially and adversely affect the Property and operation or intended operation thereof, or any portion thereof, of which Seller has knowledge.
- (g) The Seller has paid all real estate and personal property taxes, assessments, excises, and levies that are presently due, if any, which are against or are related to the Property, or will be due as of the Closing, and the Property will be subject to no such liens.
- (h) The Seller shall convey the Property free and clear of all debts, liens and encumbrances.
- (i) Seller has not contracted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction or taken any action which would result in any real estate broker commissions or finder's fee or other fees payable to any other party with respect to the transactions contemplated by this Contract.
- (j) To the best of Seller's knowledge, there has not occurred the disposal or release of any Hazardous Substance to, on or from the Property.

As used in this Contract, "Hazardous Substance" means and includes all hazardous and toxic substances, waste or materials, chemicals, and any pollutant or contaminant, including without limitation, PCB's, asbestos, asbestos-containing material, petroleum products and raw materials, that are included under or regulated by any Environmental Law or that would or may pose a health, safety or environmental hazard.

As used in this Contract, "Environmental Law" means and includes all federal, state, and local statutes, ordinances, regulations and rules presently in force or hereafter enacted relating to environmental quality, contamination, and clean-up of Hazardous Substances, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), as amended, Toxic Substance Control Act, 15 U.S.C. 2601, et seq., and state superlien and environmental clean-up statutes and all rules and regulations presently or hereafter promulgated under or related to said statutes, as amended.

- (k) All Leases, as defined in **Article V, Section 5.02(a)**, shall have expired or otherwise terminated and any and all tenants or parties occupying the Property pursuant to the Leases shall have permanently abandoned and vacated the Property on or before the date of Closing.
- (l) The Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

5.02 Covenants and Agreements of Seller. Seller covenants and agrees with Buyer as follows:

- (a) Unless stated otherwise, within ten (10) calendar days after the Effective Date, Seller, at Seller's sole cost and expense, shall deliver to Buyer, with respect to the Property, true, correct, and complete copies of the following:
 - (i) All lease agreements and/or occupancy agreements and/or licenses of any kind or nature (if oral, Seller shall provide to Buyer in writing all material terms thereof) relating to the possession of the Property, or any part thereof, including any and all modifications, supplements, and amendments t (the "Leases").
 - (ii) All environmental audits, soil tests and engineering and feasibility reports, including any and all modifications, supplements and amendments t, with respect to the Property that Seller possesses or has the right to receive.
- (b) From the Effective Date until the date of Closing or earlier termination of this Contract, Seller shall:
 - (i) Not enter into any written or oral contract, lease, easement or right of way agreement, conveyance or any other agreement of any kind with respect to, or affecting, the Property that will not be fully performed on or before the Closing or would be binding on Buyer or the Property after the date of Closing.
 - (ii) Advise the Buyer promptly of any litigation, arbitration, or administrative hearing concerning or affecting the Property.
 - (iii) Not take, or omit to take, any action that would result in a violation of the representations, warranties, covenants, and agreements of Seller.
 - (iv) Not sell, assign, lease or convey any right, title or interest whatsoever in or to the Property, or create, grant or permit to be attached or perfected, any lien, encumbrance, or charge thereon.
- (c) Seller shall indemnify and hold Buyer harmless, to the extent permitted by law, from all loss, liability, and expense, including, without limitation, reasonable

attorneys' fees, arising or incurred as a result of any liens or claims resulting from labor or materials furnished to the Property under any written or oral contracts arising or entered into prior to Closing.

5.03 Survival Beyond Closing. Notwithstanding anything to the contrary contained in this Contract, the representations, warranties, covenants and agreements of Seller contained in this Contract shall survive the Closing, and shall not, in any circumstance, be merged with the Special Warranty Deed, as described in **Article VII, Section 7.02(a)**.

ARTICLE VI

CONDITIONS PRECEDENT TO PERFORMANCE

6.01 Performance of Seller's Obligations. Buyer is not obligated to perform under this Contract unless, within the designated time periods, all of the following shall have occurred:

- (a) Seller has performed, furnished, or caused to be furnished to Buyer all items required to be so performed or furnished under other sections of this Contract; and
- (b) Seller cures or Buyer waives in writing, within the time periods specified in **Article III**, all of Buyer's objections made in accordance with **Article III**.

6.02 Breach of Seller's Representations, Warranties, Covenants and Agreements. Buyer is not obligated to perform under this Contract unless all representations, warranties, covenants and agreements of Seller contained in this Contract are true and correct or have been performed, as applicable, as of the Closing Date, except where specific reference is made to another date.

6.03 Adverse Change. Buyer is not obligated to perform under this Contract, if on the date of Closing, any portion of the Property has been condemned by an entity other than Buyer, or is the subject of condemnation, eminent domain, or other material proceeding initiated by an entity other than Buyer, or the Property, or any part thereof, has been materially or adversely impaired in any manner.

6.04 Review Period. Buyer is not obligated to perform under this Contract if Buyer delivers notice to Seller pursuant to **Article IV, Section 4.01** that Buyer has determined that the Property is unsuitable to or for Buyer's purposes.

6.05 Buyer's Right to Waive Conditions Precedent. Notwithstanding anything contained in this Contract to the contrary, Buyer may, at Buyer's option, elect to waive any of the conditions precedent to the performance of Buyer's obligations under this Contract by giving to the Seller, at any time prior to Closing, a written waiver specifying the waived condition precedent.

6.06 Buyer's Termination if Conditions Precedent Not Satisfied or Waived. If any of the conditions precedent to the performance of Buyer's obligations under this Contract

have not been satisfied by Seller or waived by the Buyer, the Buyer may, by giving written notice to Seller, terminate this Contract. On Buyer's termination, the Earnest Money shall be immediately returned to Buyer by the Title Company. The Seller shall, on written request from Buyer, promptly issue the instructions necessary to instruct the Title Company to return to Buyer the Earnest Money and, thereafter, except as otherwise provided in this Contract, Buyer and Seller shall have no further obligations under this Contract, one to the other.

ARTICLE VII

CLOSING

7.01 Date and Place of Closing. The Closing shall take place in the offices of the Title Company and shall be accomplished through an escrow to be established with the Title Company, as escrowee. The Closing Date shall be on or before 5:00 p.m. seventy five (75) calendar days after the Effective Date, unless otherwise mutually agreed upon by Buyer and Seller.

7.02 Items to be Delivered at the Closing.

- (a) **Seller.** At the Closing, Seller shall deliver or cause to be delivered to Buyer or the Title Company, at the expense of the party designated, the following items:
- (i) The Title Policy, in the form specified in **Article III, Section 3.05**;
 - (ii) The Special Warranty Deed, substantially in the form as attached as Attachment "1", subject only to the Permitted Exceptions, if any, duly executed by Seller and acknowledged;
 - (iii) Evidence of Seller's authority to close this transaction; and
 - (iv) Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.
- (b) **Buyer.** At the Closing, Buyer shall deliver to Seller or the Title Company, the following items:
- (i) The sum required by **Article II, Section 2.01**, less the Earnest Money and interest earned thereon, in the form of a check or cashier's check or other immediately available funds;
 - (ii) Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

7.03 Adjustments at Closing. Notwithstanding anything to the contrary contained in this Contract and without limiting the general application of the provisions of **Section 5.03**, above, the provisions of this **Article VII, Section 7.03** shall survive the Closing.

Ad valorem taxes relating to the Property for the calendar year in which the Closing shall occur shall be prorated between Seller and Buyer as of the Closing Date. If the actual amount of taxes for the calendar year in which the Closing shall occur is not known as of the Closing Date, the proration at Closing shall be based on the amount of taxes due and payable with respect to the Property for the preceding calendar year. As soon as the amount of taxes levied against the Property for the calendar year in which Closing shall occur is known, Seller and Buyer shall readjust in cash the amount of taxes to be paid by each party with the result that Seller shall pay for those taxes attributable to the period of time prior to the Closing Date (including, but not limited to, subsequent assessments for prior years due to change of land usage or ownership occurring prior to the date of Closing) and Buyer shall pay for those taxes attributable to the period of time commencing with the Closing Date.

7.04 Possession at Closing. Possession of the Property shall be delivered to Buyer at Closing.

7.05 Costs of Closing. Each party is responsible for paying the legal fees of its counsel, in negotiating, preparing, and closing the transaction contemplated by this Contract. Buyer will be responsible for paying fees, costs and expenses for the closing of this transaction.

ARTICLE VIII

DEFAULTS AND REMEDIES

8.01 Seller's Defaults and Buyer's Remedies.

- (a) **Seller's Defaults.** Seller is in default under this Contract on the occurrence of any one or more of the following events:
- (i) Any of Seller's warranties or representations contained in this Contract are untrue on the Closing Date; or
 - (ii) Seller fails to meet, comply with or perform any covenant, agreement, condition precedent or obligation on Seller's part required within the time limits and in the manner required in this Contract; or
 - (iii) Seller fails to deliver at Closing, the items specified in **Article VII, Section 7.02(a)** of this Contract for any reason other than a default by Buyer or termination of this Contract by Buyer pursuant to the terms hereof prior to Closing.
- (b) **Buyer's Remedies.** If Seller is in default under this Contract, Buyer as Buyer's sole and exclusive remedies for the default, may, at Buyer's sole option, do any of the following:
- (i) Terminate this Contract by written notice delivered to Seller in which

event the Buyer shall be entitled to a return of the Earnest Money, and Seller shall, promptly on written request from Buyer, execute and deliver any documents necessary to cause the Title Company to return to Buyer the Earnest Money;

- (ii) Enforce specific performance of this Contract against Seller, requiring Seller to convey the Property to Buyer subject to no liens, encumbrances, exceptions, and conditions other than those shown on the Title Commitment, whereupon Buyer shall waive title objections, if any, and accept such title without reduction in Purchase Price on account of title defects and shall be entitled to assert any rights for damages based on Seller's representations, warranties and obligations that are not waived by Buyer by its acceptance of Seller's title; and
- (iii) Seek other recourse or relief as may be available to Buyer at or by law, equity, contract or otherwise.

8.02 Buyer's Default and Seller's Remedies.

- (a) **Buyer's Default.** Buyer is in default under this Contract if Buyer fails to deliver at Closing, the items specified in **Article VII, Section 7.02(b)** of this Contract for any reason other than a default by Seller under this Contract or termination of this Contract by Buyer pursuant to the terms hereof prior to Closing.
- (b) **Seller's Remedy.** If Buyer is in default under this Contract, Seller, as Seller's sole and exclusive remedies for the default, may, at Seller's sole option, do either one of the following:
 - (i) Terminate this Contract by written notice delivered to Buyer in which event the Seller shall be entitled to a return of the Earnest Money, and Buyer shall, promptly on written request from Seller, execute and deliver any documents necessary to cause the Title Company to return to Seller the Earnest Money; or
 - (ii) Enforce specific performance of this Contract against Buyer.

ARTICLE IX MISCELLANEOUS

9.01 Notice. All notices, demands, requests, and other communications required hereunder shall be in writing, delivered, unless expressly provided otherwise in this Contract, by telephonic facsimile, by hand delivery or by United States Mail, and shall be deemed to be delivered, upon the earlier to occur of (a) the date provided if provided by telephonic facsimile or hand delivery, and (b) the date of the deposit of, in a regularly maintained receptacle for the United States Mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

SELLER:

Fax _____

BUYER:

City of Denton
Paul Williamson
Real Estate and Capital Support
901-A Texas St.
Denton, Texas 76209
Fax: (940) 349-8951

Copies to:

For Seller:

Fax _____

For Buyer:

Larry Collister, Deputy City Attorney
City of Denton – Legal Department
215 E. McKinney St.
Denton, Texas 76201
Fax: (940) 382-7923

9.02 Governing Law and Venue. This Contract is being executed and delivered and is intended to be performed in the State of Texas, the laws of Texas governing the validity, construction, enforcement and interpretation of this Contract. THIS CONTRACT IS PERFORMABLE IN, AND THE EXCLUSIVE VENUE IS, IN DENTON COUNTY, TEXAS.

9.03 Entirety and Amendments. This Contract embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, related to the Property, and may be amended or supplemented only in writing executed by the party against whom enforcement is sought.

9.04 Parties Bound. This Contract is binding upon and inures to the benefit of Seller and Buyer, and their respective successors and assigns. If requested by Buyer, Seller agrees to execute, acknowledge and record a memorandum of this Contract in the Real Property Records of Denton County, Texas, imparting notice of this Contract to the public.

9.05 Risk of Loss. If any damage or destruction to the Property shall occur prior to Closing, or if any condemnation or any eminent domain proceedings are threatened or initiated by an entity or party other than Buyer that might result in the taking of any portion of the Property, Buyer may, at Buyer's option, do any of the following:

- (a) Terminate this Contract and withdraw from this transaction without cost, obligation or liability, in which case the Earnest Money shall be immediately returned to Buyer; or

- (b) Consummate this Contract, in which case Buyer, with respect to the Property, shall be entitled to receive any (i) in the case of damage or destruction, all insurance proceeds; and (ii) in the case of eminent domain, proceeds paid for the Property related to the eminent domain proceedings.

Buyer shall have a period of up to ten (10) calendar days after receipt of written notification from Seller on the final settlement of all condemnation proceedings or insurance claims related to damage or destruction of any improvement located on the Property, in which to make Buyer's election. In the event Buyer elects to close prior to such final settlement, then the Closing shall take place as provided in **Article VII**, above, and there shall be assigned by Seller to Buyer at Closing all interests of Seller in and to any and all insurance proceeds or condemnation awards which may be payable to Seller on account of such event. In the event Buyer elects to close upon this Contract after final settlement, as described above, Closing shall be held five (5) business days after such final settlement.

9.06 Further Assurances. In addition to the acts and deeds recited in this Contract and contemplated to be performed, executed and/or delivered by Seller and Buyer, Seller and Buyer agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered at the Closing or after the Closing, any further deeds, acts, and assurances as are reasonably necessary to consummate the transactions contemplated. Notwithstanding anything to the contrary contained in this Contract and without limiting the general application of the provisions of **Section 5.03**, above, the provisions of this **Article IX, Section 9.06** shall survive Closing.

9.07 Time is of the Essence. It is expressly agreed between Buyer and Seller that time is of the essence with respect to this Contract.

9.08 Exhibits. The Exhibits which are referenced in, and attached to this Contract, are incorporated in and made a part of, this Contract for all purposes.

9.09 Delegation of Authority. Authority to take any actions that are to be, or may be, taken by Buyer under this Contract, including without limitation, adjustment of the Closing Date, are delegated by Buyer, pursuant to action by the City Council of Denton, Texas, to Frank Payne, P.E., City Engineer of Buyer, or his designee.

9.10 Contract Execution. This Contract of Sale may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any of the parties may execute this Agreement by signing any such counterpart.

9.11 Business Days. If the Closing Date or the day of performance required or permitted under this Contract falls on a Saturday, Sunday or Denton County holiday, then the Closing Date or the date of such performance, as the case may be, shall be the next following regular business day.

9.12 Removal of Pecan Trees from Property. Seller has one-hundred and eighty (180) days after closing to remove any pecans tree located on the Property.

SELLER:

JOHN R. LOTT, Individually, and as manager of
of OPAL ESTELLE HOLDINGS, LLC, a Texas
series limited liability company

Executed by Seller on the _____ day of _____, 2014.

BUYER:

By: _____
GEORGE C. CAMPBELL, CITY MANAGER

Executed by Buyer on the _____ day of _____, 2014.

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: _____

RECEIPT OF AGREEMENT BY TITLE COMPANY

By its execution below, Title Company acknowledges receipt of an executed copy of this Contract. Title Company agrees to comply with, and be bound by, the terms and provisions of this Contract and to perform its duties pursuant to the provisions of this Contract and comply with Section 6045(e) of the Internal Revenue Code of 1986, as amended from time to time, and as further set forth in any regulations or forms promulgated thereunder.

TITLE COMPANY:

Title Resources, LLC
525 South Loop 288, Suite 125
Denton, Texas 76205
Phone: (940) 381-1006
Fax: (940) 898-0121

By: _____

Printed Name: _____

Title: _____

Contract receipt date: _____, 2014

EXHIBIT "A"
TO
CONTRACT OF SALE

Legal Description and Depiction of Property

All that certain tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being all of Lots 3 and 4 of the Whitten Addition, an addition as shown of record in Volume 7, Page 12 of the Plat Records of Denton County, Texas.

ATTACHMENT "1"
TO
CONTRACT OF SALE

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.

SPECIAL WARRANTY DEED

STATE OF TEXAS §

COUNTY OF DENTON § KNOW ALL MEN BY THESE PRESENTS

That JOHN R. LOTT, individually, and OAK MED PARK, LCC, a series of OPAL ESTELLE HOLDINGS, LLC, a Texas series limited liability company ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration to Grantor in hand paid by the City of Denton, Texas, a Texas home rule municipal corporation ("Grantee"), 215 E. McKinney, Denton, Texas 76201, the receipt and sufficiency of which is acknowledged, subject to the reservations set forth below, has GRANTED, SOLD and CONVEYED, and does GRANT, SELL and CONVEY, unto Grantee all the real property in Denton County, Texas being particularly described on Exhibit "A" attached and made a part for all purposes, and being located in Denton County, Texas, together with any and all rights or interests of Grantor in and to adjacent streets, alleys and rights of way and together with all and singular the improvements and fixtures thereon and all other rights and appurtenances (collectively, the "Property").

Grantor, subject to the limitation of such reservation made, reserves, for itself, its successors and assigns all oil, gas and other minerals in, on and under and that may be produced from the Property. Grantor, its successors and assigns shall not have the right to use or access the surface of the Property, in any way, manner or form, in connection

with or related to the reserved oil, gas, and other minerals and/or related to exploration and/or production of the oil, gas and other minerals reserved, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas and other minerals, and/or related to the exploration or production of same.

The term "minerals" shall include oil, gas and all associated hydrocarbons, and shall exclude (i) all substances (except oil, gas and all associated hydrocarbons) that any reasonable extraction, mining or other exploration and/or production method, operation, process or procedure would consume, deplete or destroy the surface of the Property; and (ii) all substances (except oil and gas) which are at or near the surface of the Property. The intent of the parties is that the meaning of the term "minerals" as utilized, shall be in accordance with that set forth in *Reed v. Wylie*, 597 S.W.2d 743 (Tex. 1980).

The term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

This conveyance is subject to the following:

(All of those Exceptions from Coverage found on Schedule B of the Owners Title Policy to which referenced is made for all purposes and incorporated by reference.)

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances in anywise belonging unto Grantee and Grantee's successors and assigns forever; and Grantor does bind Grantor and Grantor's successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or

to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise.

EXECUTED the _____ day of _____, 2014

GRANTOR:

JOHN R. LOTT, individually, and as
manager of OPAL ESTELLE HOLDINGS,
LLC, a Texas series limited liability
company

State of Texas §
County of _____ §
§

This instrument was acknowledged before me on this _____ day of _____, 2014 by JOHN R. LOTT, individually, and as as manager of HICKORY MED, LLC, a series of OPAL ESTELLE HOLDINGS, LLC, a Texas series limited liability company.

Notary Public, State of _____
My Commission Expires: _____

Upon Filing Return To:
The City of Denton-Engineering
Attn: Paul Williamson
901-A Texas Street
Denton, TX 76209

Send Tax Billing Statements To:
The City of Denton
Attn: Finance Department
215 East McKinney Street
Denton, Texas 76201

Exhibit "A" PAGE 1 to SWD

All that certain tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being all of Lots 3 and 4 of the Whitten Addition, an addition as shown of record in Volume 7, Page 12 of the Plat Records of Denton County, Texas.