

ORDINANCE NO. 2016 - \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE A REAL ESTATE SALES CONTRACT BETWEEN THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AS PURCHASER, AND EAGLE FARMS, INC., A TEXAS CORPORATION, AND JOHN PORTER AUTO SALES, INC., A TEXAS CORPORATION, (COLLECTIVELY "OWNER"), AS SELLER, TO ACQUIRE FEE TITLE TO A 340.469 ACRE TRACT SITUATED IN THE GIBSON MYERS SURVEY, ABSTRACT NO. 843, THE JOHNSON, GREEN, MYERS, AND BRUMMELL SURVEY, ABSTRACT NO. 1699, THE MOSES H. DAVIS SURVEY, ABSTRACT NO. 377, AND THE WILLIAM WILBURN SURVEY, ABSTRACT NO. 1419, LOCATED IN THE CITY OF DENTON, DENTON COUNTY, TEXAS, GENERALLY SOUTH OF JIM CHRISTAL ROAD, EAST OF HICKORY CREEK COURT, AND NORTH OF TOM COLE ROAD, AND MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" ("PROPERTY INTEREST") FOR THE PURCHASE PRICE OF ELEVEN MILLION AND FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$11,500,000.00), AND OTHER CONSIDERATION, AS PRESCRIBED IN THE REAL ESTATE SALES CONTRACT (THE "CONTRACT"); AUTHORIZING THE EXPENDITURE OF FUNDS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton ("City") made a bona fide offer to Eagle Farms, Inc., a Texas corporation, and John Porter Auto Sales, Inc., a Texas corporation, (collectively "Owner") to purchase the Property Interest;

WHEREAS, the Owner has made a counteroffer to the offer of the City;

WHEREAS, the City is amenable to the counteroffer, and finds that it is in the best interest to agree to same; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or his designee, is authorized (a) to execute on behalf of the City (i) the Real Estate Sales Contract, between the City and Owner, substantially in the form attached as Exhibit "A", with a purchase price of \$11,500,000.00 and other consideration, plus costs and expenses, all as prescribed in the Real Estate Sales Contract; and (ii) any other documents necessary for closing, or terminating, the transaction contemplated by the Real Estate Sales Contract; and (b) to make expenditures in accordance with the terms of the Real Estate Sales Contract.

SECTION 2. If any section, article, paragraph, sentence, phrase, clause or word in this ordinance, or application thereof to any persons or circumstances, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; the City Council declares that it would have ordained such remaining portion despite such invalidity, and such remaining portion shall remain in full force and effect.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_\_ day of September, 2016.

\_\_\_\_\_  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

# **REAL ESTATE SALES CONTRACT**

This REAL ESTATE SALES CONTRACT ("Contract") is entered into by Eagle Farms, Inc., a Texas corporation, and John Porter Auto Sales, Inc., a Texas corporation, (collectively "Seller"), and City of Denton, a Texas home-rule municipal corporation ("Purchaser").

## **RECITALS**

Seller wants to sell to Purchaser and Purchaser wants to purchase from Seller all of Seller's right, title, and interest in and to the real property described below.

## **AGREEMENT**

In consideration of these recitals, the mutual covenants, agreements, and obligations stated below, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Seller and Purchaser agree as follows:

## **ARTICLE 1 SALE AND PURCHASE**

**1.1. Property.** Subject to the terms and conditions set forth in this Contract, Purchaser agrees to purchase from Seller, and Seller agrees to sell to Purchaser, the following described property (collectively, "Property"):

(a) that certain tract of land containing approximately 340.469 acres ("Land") located in Denton County, Texas, and more particularly described in the attached Exhibit A;

(b) all rights, privileges, and appurtenances pertaining to the Land, including but not limited to all trees, timber rights and contracts for cutting timber, water rights, claims and permits, adjacent streets, and easements and rights of way;

(c) all intangible property, if any, owned by Seller and pertaining to the Land or the use of it, including but not limited to all present and future use of wastewater, wastewater capacity, drainage, drainage capacity, water, water capacity, or other utility facilities directly attributable to the Land;

(d) all reservations of, commitments for, and letters covering utility capacity, whether or not they are currently being used to the fullest extent available;

(e) all of Seller's right, title, and interest and estates in any land lying within the bed of any stream, river, lake, or other waterway or body of water on or crossing that portion of the Land;

(f) all of Seller's right, title, and interest and estates in any land within any easement or right of way or under any bed of any road or highway, whether open or proposed on or crossing that portion of the Land;

(g) all of Seller's right, title, and interest and estates in any excess land, vacancies, and strips and gores of land, if any, between that portion of the Land, and any adjoining real properties belonging to third parties; and

(h) access to the Land.

## **1.2. Reservation of Minerals to Seller; Seller's Waiver of Surface Use.**

(a) "Mineral Estate" means all oil, gas, and other minerals in and under and that may be produced from the Property, any royalty under any existing or future mineral lease covering any part of the Property, executive rights (including the right to sign a mineral lease covering any part of the Property), implied rights of ingress and egress, exploration and development rights, production and drilling rights, mineral lease payments, and all related rights and benefits. The Mineral Estate does NOT include water, sand, gravel, limestone, building stone, caliche, surface shale, near-surface lignite, and iron, but DOES include the reasonable use of these surface materials for mining, drilling, exploring, operating, developing, or removing the oil, gas, and other minerals from the Property.

(b) Seller reserves all of the Mineral Estate owned by Seller.

(c) Notwithstanding the foregoing, Seller does not reserve and retain any rights of ingress and egress or rights to use the surface of the Property, either implied or express, for mining, drilling, exploring, operating, developing, or removing the oil, gas, and other minerals; provided however, that Seller shall have the right to remove the oil, gas, and other minerals by pooling with other lands, including, but not limited to, the right to construct any wellbore for the removal of such oil, gas or other minerals which runs underneath the surface of the Property.

## **ARTICLE 2 PURCHASE PRICE**

**2.1. Purchase Price.** The purchase price for the Property ("Purchase Price") is Eleven Million Five Hundred Thousand and No/100 Dollars (\$11,500,000.00), payable in cash or other immediately available funds at Closing (as defined in Section 6.1).

## **ARTICLE 3 EARNEST MONEY**

**3.1. Earnest Money Deposit.** Within three (3) business days after this Contract is fully executed by Seller and Purchaser, Seller will deposit with Republic Title of Texas, Inc.

Fort Worth – Commercial Division, (“Title Company”), at 500 Bailey Ave., Suite 100, Fort Worth, Texas 76107, a fully executed original counterpart of this Contract. In addition, within five (5) business days after an original executed counterpart of this Contract is deposited with the Title Company, Purchaser will deposit with the Title Company the amount of One Hundred Thousand and No/100 Dollars (\$100,000.00) to ensure prompt observance of this Contract by Purchaser (“Earnest Money Deposit”). After receiving all applicable tax forms from Purchaser, the Title Company will invest the Earnest Money Deposit in a federal-government-insured interest-bearing account approved by Seller and to be held and disbursed by the Title Company strictly in accordance with the terms and provisions of this Contract. All interest accruing on the Escrow Deposit will become a part of the Escrow Deposit and will be delivered to the party entitled to receive the Escrow Deposit. If the Purchaser does not timely deposit the Escrow Deposit(s) with the Title Company, Seller will have the right to terminate this Contract. At Closing, the Escrow Deposit will be applied to the payment of the Purchase Price.

**3.2. Refundability.** After the Review Period (as defined in Section 5.1) expires, the Earnest Money Deposit will be nonrefundable to Purchaser, except that the Earnest Money Deposit will be promptly refunded to Purchaser and the parties will have no further obligations if this Contract is terminated under Section 8.2.

## **ARTICLE 4 TITLE STATUS**

### **4.1. Title Commitment and Survey.**

(a) Seller will deliver or have delivered to Purchaser within twenty (20) days after the Effective Date (as defined in Section 12.13) commitment for title insurance (the “Title Commitment”) prepared by the Title Company, accompanied by a copy of all recorded documents affecting the Property and listed as title exceptions in Schedule B of the Title Commitment.

(b) Purchaser will cause to be prepared, within twenty (20) days after the Effective Date (as defined in Section 12.13) a Texas Society of Professional Surveyors Category 1-A, Condition III land title survey of the Property (“Survey”), prepared by Teague, Nall, & Perkins, Inc., containing the surveyor’s certificate addressed to Seller, Purchaser and Title Company in the form of the certificate attached as Exhibit B, in which said Survey will, in addition to conforming to the requirements of a Category 1-A, Condition III Survey, (i) be made on the ground with iron pins at the corners, (ii) locate all existing easements that are visible or known to the surveyor or recorded (and if recorded, setting forth the recording information), alleys, streets, and roads, (iii) show all encroachments on the Land, (iv) show all existing improvements (including power lines, fences, drill equipment, ditches, and related matters), (v) comply with standards necessary for the Title Company to issue the title policy to be delivered by the Title Company, (vi) show the boundaries and areas of the Property to the nearest one-thousandth of an acre, (vii) provide a legal description of the Land,

(viii) addressing all matters set forth in the surveyor's certification attached as Exhibit B, and (ix) contain the surveyor's certification attached as Exhibit B.

**4.2. Review of Title Documents.** The review of the Commitment, the Exception Documents, and the Survey (collectively, "Title Documents") will be governed by the following terms:

(a) **Purchaser Obligations.** Purchaser will have until five (5) business days after Purchaser's receipt of the last of the Title Documents ("Title/Survey Review Period") to provide to Seller written objections to the status of title to the Property. If written objections have not been received by Seller before the Title/Survey Review Period expires, Purchaser will be deemed to have conclusively accepted and approved the status of title to the Property as shown by the Title Documents, and all the matters shown in the Title Documents will be Permitted Exceptions.

(b) **Seller Response.** If Purchaser does timely deliver written objections to Seller, Seller will within three (3) business days after receiving them ("Response Period") notify Purchaser of which objections Seller will cure before Closing ("Cure Notice"), Seller having no obligation to cure any of Purchaser's title objections. If Seller does not agree or is unable to timely cure all of Purchaser's title objections, Purchaser may either (1) waive the title objections in writing and purchase the Property despite them, in which event the title objections will be deemed Permitted Exceptions, or (2) terminate this Contract by giving written notice to Seller within three (3) business days after the Response Period, in which event the Earnest Money Deposit will be returned to Purchaser on demand, and neither Seller nor Purchaser will have any further obligations under this Contract except for those that expressly survive its termination.

**4.3. Conveyance by Deed.** Seller will deliver to Purchaser at Closing one or more Special Warranty Deeds, at Purchaser's sole discretion, in the form and substance of Exhibit C attached hereto ("Deed"), conveying fee simple title to the Property to Purchaser, containing the matters set forth in Section 1.2 and each subject to the exceptions to title contained in the Title Documents approved or waived by Purchaser under Section 4.2.

## **ARTICLE 5**

### **FEASIBILITY REVIEW, INSPECTION AND EXAMINATION**

**5.1. Review Period.** The Purchaser's feasibility review, inspection and examination of the Property will be governed by the following terms:

(a) **Time Period.** For the Independent Contract Consideration (as defined in Section 12.10), Purchaser will have a period of forty-five (45) days after the Effective Date ("Review Period"), during which time Purchaser, or its authorized agents or representatives, will be conducting its feasibility review, inspection and examination of the Property and, to the extent necessary, will be entitled to enter on the Property for

the purpose of inspecting, examining, and conducting tests on the Property; provided however, that Purchaser will return the Property to its condition existing prior to such inspections, examinations or tests promptly following the completion of such inspections, examinations or tests and agrees to hold Seller harmless from any injuries, death or property damage that might occur to Purchaser or Purchaser's contractors or employees during any entry onto the Property.

(b) Termination. If Purchaser, in its sole discretion, is dissatisfied with the results of the feasibility review, inspection and examination of the Property and determines, in its sole judgment, that the Property is not suitable, for any reason, for Purchaser's intended use or purpose, Purchaser may, by written notice delivered to Seller before the Review Period expires, terminate this Contract, in which event the Earnest Money Deposit will be returned to Purchaser on demand, and neither Seller nor Purchaser will have any further obligations under this Contract except for those that expressly survive its termination. If Purchaser does not terminate this Contract by delivery of written notice to Seller before the Review Period expires, Purchaser will no longer have a right of termination under this Section, but will have a continuing right to enter on the Property.

**5.2. Environmental Survey.** The inspection and examination of the Property relative to the environmental condition of the Property will be governed by the following terms:

(a) Examination Authority. Purchaser, at its expense, will have the right to conduct Phase I and, if necessary, Phase II environmental surveys (collectively, "Environmental Survey") of the Property, which must be completed before the Review Period expires. If an Environmental Survey is conducted, Purchaser will deliver to Seller a written report stating the findings obtained in the Environmental Survey.

(b) Remediation/Termination. If, as a result of the Environmental Survey, or by any other means, Purchaser or Seller becomes aware of the existence of toxic or hazardous wastes (including asbestos) or other environmental contamination on or within the Property, Purchaser will have the right to immediately terminate this Contract before the Review Period expires. If Purchaser terminates this Contract under this Section, the Earnest Money Deposit will be returned to Purchaser and the parties will have no further obligations under this Contract except for those that expressly survive its termination.

**5.3. Document Inspection.** To facilitate Purchaser's inspection of the Property, Seller will provide to Purchaser, within five (5) business days after the Effective Date, but only to the extent within Seller's actual possession, true, correct, and complete copies of (a) all reports, tests (including, but not limited to, all soil reports, water rights, engineering investigations, tests, and environmental studies), (b) surveys made with respect to the Property within two (2) years before the Effective Date, (c) all leases and/or occupancy agreements

and/or licenses of any kind or nature, whether oral or written (if oral, Seller shall provide to Buyer in writing all material terms thereof), relating to possession of the Property, or any part thereof, including any and all modifications, supplements, and amendments thereto, (d) all licenses, agreements and encumbrances (including amendments and exhibits) affecting title to or use of the Property that have not been recorded in the real property records of Denton County, Texas, (e) all governmental licenses, certificates, permits, and approvals, and (f) all records of any regulatory proceedings or violations. Additionally, Seller will provide any further information in its actual possession relating to the Property that may be reasonably requested in writing by Purchaser. Purchaser acknowledges that any information of any type that Purchaser has received or may receive from Seller or its agents is furnished to Purchaser as a courtesy only and on the express condition that Purchaser will make an independent verification of the accuracy of the information.

## **ARTICLE 6 CLOSING**

**6.1. Closing Date.** The consummation of the transactions contemplated by this Contract ("Closing") will take place in the offices of the Title Company, at 3:00 p.m. on November 2, 2016.

**6.2. Closing Costs.** At Closing, Seller will pay (a) any costs related to the issuance of the Commitment and the base premium for the Owner Policy, (b) the cost of satisfying any liens not deemed Permitted Exceptions which Seller has agreed to cure as set forth herein, (c) Seller's legal fees, (d) one-half (1/2) of any escrow or closing fee charged by the Title Company and the cost of any tax certificates, municipal and utility lien certificates, and (e) all other items normally paid by sellers in real estate transactions in Denton County, Texas. Purchaser will pay (a) the cost of Purchaser's due-diligence inspection, (b) the cost to modify the areas-and-boundaries exception in the Owner Policy to read "shortages in area" only (if requested by Purchaser), (c) the cost for any extended coverages or endorsements to the Owner Policy required by Purchaser, (d) one-half (1/2) of any escrow or closing fee charged by the Title Company, and (e) all other items normally paid by purchasers in real estate transactions in Denton County, Texas.

**6.3. Real Estate Tax Prorations.** Title to the Property on the day of Closing will belong to Purchaser, and all prorations to be made as of Closing will be made as of 12:01 a.m., Central Prevailing Time, on the Closing Date. Ad valorem taxes relating to the Property for the calendar year in which the Closing shall occur shall be prorated and submitted by Seller to the Denton County Tax Assessor as of the Closing Date or credited to the Purchaser at Closing. Ad valorem tax for the calendar year in which the Closing shall occur shall be tendered under *Texas Property Tax Code Section 26.11*. 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. Seller shall pay for those taxes attributable to the period of time prior to the Closing Date (provided, however, that subsequent assessments for prior years due to



change of land usage or ownership by Purchaser after the Closing Date shall be the sole responsibility of Purchaser) and Purchaser shall pay for those taxes attributable to the period of time commencing with the Closing Date. The terms and provisions of this Section will survive the Closing.

**6.4. Seller's Obligations at Closing.** At Closing, Seller will deliver, or have delivered in accordance with local custom and practice, to the Title Company the documents in (a)-(f) below, each of which will be duly executed and, if appropriate, acknowledged, together with any other necessary or appropriate items or instruments:

(a) Deed. Seller will deliver to Purchaser at Closing one or more Special Warranty Deeds, at Purchaser's sole discretion, in the form and substance of Exhibit C ("Deed") conveying fee simple title to the Property to Purchaser with each containing the matters set forth in Sections 1.2 (b) and (c), and each subject to the exceptions to title contained in the Title Documents approved or waived by Purchaser under Section 4.2.

(b) Nonforeign Affidavit. An affidavit required under Internal Revenue Code Section 1445 stating, under penalty of perjury, that neither Seller nor any other party so swearing is a foreign person within the meaning of Section 1445.

(c) Evidence of Authority. Any documents reasonably requested by the Title Company or required by this Contract to confirm that this transaction and the parties executing the documents are fully authorized and empowered to act.

(d) Owner Policy. An Owner's Policy of Title Insurance ("Owner's Title Policy") issued by the Title Company, insuring good and indefeasible title to the Property in Purchaser in a face amount equal to the Purchase Price, and containing no exceptions other than the Permitted Exceptions; an exception for fees and taxes for the calendar year in which the Closing occurs and subsequent years, and subsequent assessments for prior years due to change in land usage or ownership; an exception for any discrepancies, conflicts, or shortages in area or boundary lines, any encroachments or protrusions, or any overlapping of improvements; an exception for homestead or community property or survivorship rights, if any, of any spouse of any insured; an exception for any title or rights asserted by anyone, including but not limited to persons, corporations, governments, or other entities to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs, or oceans, or to any land extending from the line of mean low tide to the line of vegetation, or to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or to filled-in lands, or artificial islands, or to riparian rights or other statutory water rights, or the rights or interests of the state in which the Property is located or the public generally in the area extending from the line of mean low tide to the line of vegetation, or the right of access to or right of easement along and across the same; and any other printed exceptions that are customary for an

Owner's Title Policy in the State of Texas.

**6.5. Purchaser's Obligations at Closing.** At Closing, Purchaser will deliver, or have delivered in accordance with local custom and practice, to the Title Company the following:

(a) Cash Funds. The cash funds for the Purchase Price (as defined in Section 2.1).

(b) Closing Documents. Any other necessary or appropriate items or instruments reasonably requested by the Title Company or Seller.

(c) Evidence of Authority. Any documents reasonably requested by the Title Company or required by this Contract to confirm that this transaction and the parties executing the documents are fully authorized and empowered to act.

(d) Bagley Farms. Purchaser acknowledges that Seller has a verbal agreement with Bagley Farms to utilize the Property for farming. Seller will terminate that verbal agreement at Closing and Purchaser will compensate Bagley Farms at Closing for any crops in the ground and any work performed in conjunction with the preparation of the ground for the planting of crops which belong to Bagley Farms at Closing in an amount not to exceed Ten Thousand and No/100 Dollars (\$10,000.00).

**6.6. Delivery of Possession.** Possession of the Property will be delivered to Purchaser at Closing, after completion of funding, subject only to the Permitted Exceptions.

## **ARTICLE 7 REPRESENTATIONS, WARRANTIES, AND COVENANTS**

**7.1. Seller's Representations, Warranties, and Covenants.** Seller represents, warrants, and covenants to Purchaser the following:

(a) Authority. Seller has been duly organized and is in good standing under the laws of the state of its organization. Seller has the legal right and authority to enter into this Contract and to transfer all of the Property under this Contract. The person signing this Contract on Seller's behalf is authorized to do so.

(b) Title to Property. The Seller has good and indefeasible fee simple title to the Property, subject only to the Permitted Exceptions.

(c) Leases. All Leases 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, including without limitation, all personal property of any such tenants or parties, on or before the date of Closing.

(d) Condemnation; Legal Action. To Seller's actual knowledge, there is no pending or threatened condemnation or similar proceeding affecting the Property or pending liens in, about, or outside the Property that will affect the Property or access to it, nor any legal action of any kind affecting the Property that will affect Purchaser, nor is any such legal action presently contemplated.

(e) Governmental Requirements. To Seller's actual knowledge, Seller has complied with all applicable laws, ordinances, regulations, statutes, rules, and restrictions pertaining to and affecting the Property, and Seller's performance of this Contract will not result in any breach of, constitute any default under, or result in imposition of any lien or encumbrance on the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property might be bound.

(f) Environmental. Seller has no actual knowledge of and has not received any written notice about any violation of Environmental Laws related to the Property or the presence or release of Hazardous Materials on or from the Property or any adjacent property. Seller has not received any written notice of any threatened or pending suit or proceeding concerning the Property relating to any Environmental Law. The term "Environmental Laws" includes the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act, and other federal laws governing the environment, pollution, or hazardous materials in effect on the Effective Date of this Contract, together with their implementing regulations and guidelines as of the Effective Date of this Contract, and all state, regional, county, municipal, and other local laws, regulations, and ordinances that are similar to the federal laws stated above or that purport to regulate the environment, pollution, or hazardous materials. The term "Hazardous Materials" includes any substance, material waste, pollutant, or contaminant regulated, listed, or defined as hazardous or toxic under any Environmental Law. To Seller's actual knowledge, the Property has not been used as a landfill or as a dump for garbage or refuse.

(g) Terrorist Organizations Lists. Neither Seller nor, to Seller's actual knowledge, any of its respective partners, members, shareholders, owners, employees, officers, directors, representatives, or agents is or will become a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control of the Department of the Treasury (including those named on the OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

(h) Pending Actions. To Seller's actual knowledge, Seller has not received written notice of any action, lawsuit, arbitration, unsatisfied order or judgment, government investigation, or proceeding pending against Seller that, if adversely determined, could materially interfere with the transaction contemplated by this

Contract.

(i) No New or Amended Agreements. After the Effective Date and continuing through the earlier of the Closing Date or the termination of this Contract, Seller will not, without Purchaser's prior written consent, which may be withheld or denied in Purchaser's sole discretion, enter into any leases, licenses, occupancy agreements, or other agreements providing for the use or occupancy of the Property or services for the Property for a term that extends beyond the Closing Date.

(l) Further Action of Seller. From the Effective Date until the date of Closing or earlier termination of this Contract, Seller shall:

(i) Advise the Purchaser promptly of any litigation, arbitration, or administrative hearing, or claims related thereto, concerning or affecting the Property.

(ii) Not take, or omit to take, any action that would result in a violation of the representations, warranties, covenants, and agreements of Seller.

(iii) 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.

(iv) Seller shall indemnify and hold Purchaser 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.

(v) Seller shall provide any necessary written authorization required by Purchaser prior to Closing for any permitting, planning or zoning applications; provided, however, that no permitting, planning or zoning shall become final prior to the Closing Date, including, but not limited to, the filing and recording of any plats.

**7.2. Purchaser's Representations, Warranties, and Covenants.** Purchaser represents, warrants, and covenants to Seller the following:

(a) Authority. Purchaser has been duly organized and is in good standing under the laws of the state of its organization. Purchaser has the legal right and authority to enter into this Contract and to make the transactions under this Contract. The execution, delivery, and performance of this Contract have been duly authorized, and no other action by Purchaser is required for the valid and binding execution, delivery, and performance of this Contract, except as otherwise expressly provided. There is no agreement to which Purchaser is a party or, to Purchaser's knowledge,

binding on Purchaser that is in conflict with this Contract.

(b) Terrorist Organizations Lists. Neither Purchaser nor, to Purchaser's actual knowledge, any of its respective partners, members, shareholders, owners, employees, officers, directors, representatives, or agents is or will become a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control of the Department of the Treasury (including those named on the OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

**7.3. As Is.** Once the Review Period has expired, Purchaser will have examined and inspected the Property, reviewed all instruments, records, and documents that Purchaser deems appropriate or advisable to review in connection with this transaction, and, at its own cost and expense, made its own independent investigation into the Property and all other aspects of this transaction.

PURCHASER AGREES THAT, EXCEPT FOR SELLER'S REPRESENTATIONS AND WARRANTIES IN SECTION 7.1, SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES ABOUT THE COMPLIANCE OR NONCOMPLIANCE OF SELLER OR ANY OTHER PERSON OR ENTITY OR THE PROPERTY OR ITS OPERATION WITH (A) ALL CODES, LAWS, ORDINANCES, REGULATIONS, AGREEMENTS, LICENSES, PERMITS, APPROVALS, AND APPLICATIONS OF OR WITH ANY GOVERNMENTAL AUTHORITIES ASSERTING JURISDICTION OVER THE PROPERTY, INCLUDING BUT NOT LIMITED TO THOSE RELATING TO ZONING, LAND USE, BUILDING, PUBLIC WORKS, PARKING, FIRE AND POLICE ACCESS, HANDICAP ACCESS, LIFE SAFETY, SUBDIVISION AND SUBDIVISION SALES, AND HAZARDOUS AND TOXIC SUBSTANCES, MATERIALS, CONDITIONS, OR WASTE; AND (B) ALL AGREEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (PUBLIC OR PRIVATE), DEVELOPMENT AGREEMENTS, BUILDING RULES, AND OTHER INSTRUMENTS AND DOCUMENTS GOVERNING THE USE, DEVELOPMENT, AND OPERATION OF THE PROPERTY. PURCHASER AGREES THAT THE PROPERTY WILL BE SOLD AND CONVEYED TO (AND ACCEPTED BY) PURCHASER AT CLOSING IN ITS CONDITION AT THE TIME, **AS IS, WHERE IS, WITH ALL FAULTS, AND WITHOUT ANY WRITTEN OR ORAL REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW**, OTHER THAN THE SPECIAL WARRANTY OF TITLE IN THE DEED. FURTHER, PURCHASER REPRESENTS AND WARRANTS TO SELLER THAT PURCHASER HAS KNOWLEDGE AND EXPERTISE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE IT TO EVALUATE THE MERITS AND RISKS OF THE TRANSACTION CONTEMPLATED BY THIS CONTRACT AND THAT PURCHASER IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION. PURCHASER AGREES THAT

THE PROVISIONS IN THIS SECTION WILL SURVIVE THE CLOSING. PURCHASER WILL RELY SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED BY SELLER, ITS AGENTS, OR ITS CONTRACTORS. SELLER WILL NOT BE LIABLE OR BOUND IN ANY WAY BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION ABOUT THE PROPERTY OR ITS OPERATION FURNISHED BY ANY PARTY PURPORTING TO ACT ON SELLER'S BEHALF.

## **ARTICLE 8 DEFAULT**

**8.1. Purchaser's Default.** If Purchaser defaults in its obligation to purchase the Property from Seller under this Contract, Seller may, as its sole and exclusive remedy for the breach, terminate this Contract by written notice to Purchaser and the Title Company, and upon any such termination the Title Company will immediately deliver to Seller the Earnest Money Deposit, which is agreed on as the amount payable by Purchaser to Seller in consideration of Purchaser having the option to refuse to purchase the Property without any liability on account of its refusal other than payment of the Earnest Money Deposit.

**8.2. Seller's Default.** If Seller defaults in its obligation to convey the Property to Purchaser under this Contract, the Purchaser may, as its sole and exclusive remedy, either (i) terminate this Contract by written notice to Seller and the Title Company, in which event the Earnest Money Deposit will be returned to Purchaser, or (ii) enforce specific performance of Seller's obligations under this Contract. In no event will Seller be liable to Purchaser for any actual, punitive, speculative, consequential, or other damages.

## **ARTICLE 9 CASUALTY LOSS**

**9.1. Risk of Loss.** Risk of loss due to casualty up to and including the Closing Date will be borne by Seller (as between Seller and Purchaser), except to the extent of any loss or damage caused solely by the acts of Purchaser or its agents, employees, contractors, or invitees. The provisions of this Section will govern despite any contrary provisions of Texas Property Code Section 5.007.

**9.2. Condemnation.** By written notice to Purchaser given within five (5) days after Seller receives written notice of proceedings in eminent domain affecting the Property that are contemplated, threatened, or instituted by anybody having the power of eminent domain, Purchaser may (a) terminate this Contract and the Earnest Money Deposit will be immediately returned to Purchaser without the necessity of obtaining any consent or release by Seller, or (b) proceed under this Contract, in which event Seller will, at Closing, assign to Purchaser its entire right, title, and interest in and to any condemnation award. The provisions of this Section will govern despite any contrary provisions of Texas Property Code Section 5.007.

## **ARTICLE 10**

### **BROKER FEES AND COMMISSIONS**

**10.1. No Brokerage Fees.** Neither Seller nor Purchaser has contacted any real estate broker, agent, finder, or similar person in connection with the negotiation and execution of this Contract, the transactions contemplated by it, or the sale and purchase of the Property. To the actual knowledge of Seller and Purchaser, no Acquisition Fees have been paid or are due to any other person or entity. As used this Section, "Acquisition Fees" means all fees paid to any person or entity in connection with the selection and purchase of the Property, including real estate commissions, selection fees, nonrecurring management and startup fees, development fees, and any other similar fees. If any claims for Acquisition Fees are ever made against Seller or Purchaser in connection with the transactions contemplated by this Contract, all such claims will be the responsibility of the party whose commitments form the basis of the claims. Seller and Purchaser each agree to indemnify and hold harmless the other from and against any and all liabilities, claims, demands, or actions for or with respect to Acquisition Fees asserted by any person, firm, or corporation in connection with this Contract or the transactions contemplated by it, and any court costs, attorney fees, or other costs and expenses arising from it, insofar as any such liabilities, claims, demands, or actions are based on a contract or commitment of the indemnifying party. This indemnification provision will survive the Closing or the termination of this Contract, as applicable.

## **ARTICLE 11**

### **NOTICE**

**11.1. Notice Designation.** All notices required or permitted under this Contract must be in writing and be served on the parties at the addresses listed below. Unless otherwise provided, all notices must be given or served (a) by overnight delivery using a nationally recognized overnight courier, (b) by personal delivery, (c) by fax transmission during normal business hours with a confirmation copy delivered by another method permitted under this Section other than e-mail, or (d) by e-mail sent to the e-mail address listed below with a confirmation copy delivered by another method permitted under this Section other than fax transmission. Notice given by all permitted forms other than fax transmission or e-mail will be effective on the earlier of actual delivery to the address of the addressee or refusal of receipt by the addressee (even if the addressee refuses delivery). Notice given by fax transmission or e-mail will be effective on the transmission or attempted transmission of a fax to the phone number designated as the recipient's fax number during normal business hours or an e-mail to the e-mail address designated as the recipient's e-mail address during normal business hours. A party's address, fax number, or e-mail address may be changed by written notice to the other party, but a notice of change is not effective until actual receipt of the notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice will not be deemed a failure to give notice. Notices given by a party's attorney will be deemed given by that party. The notice addresses of the parties are specified below until further notice:

Seller:

John Porter Auto Sales, Inc.  
1801 Hinkle Drive, Suite 150  
Denton, Texas 76201  
Phone: 940-891-4223  
Fax: \_\_\_\_\_

Email: mike@porterinvestments.com

with a copy to:

Ryan W. Crandall  
Basinger Leggett Clemons  
Bowling Shore Crandall, PLLC  
5700 Granite Parkway, Suite 950  
Plano, Texas 75024  
Phone: 214-473-8686  
Fax: 214-473-8685  
Email: rcrandall@bltexaslaw.com

Purchaser:

Michael S. Grim, Executive Manager  
Denton Municipal Electric - City of Denton  
1659 Spencer Road  
Denton, Texas 76205  
Fax: (940)  
Email: mike.grim@cityofdenton.com

with a copy to:

Lawrence C. Collister, Deputy City Attorney  
City of Denton  
215 E. McKinney St.  
Denton, Texas 76209  
Fax: (940) 382-7923  
Email: larry.collister@cityofdenton.com

## **ARTICLE 12**

### **MISCELLANEOUS**

**12.1. Binding Agreement.** This Contract and all of its terms, provisions, and covenants will apply to, be binding on, and inure to the benefit of the parties and their respective successors and assigns.

**12.2. Headings.** The headings used in this Contract are for convenience only and are



not intended in any way to limit or expand the terms and provisions of this Contract.

**12.3. Time of Essence.** Time is of the essence in this Contract.

**12.4. Governing Law.** This Contract will be governed by and interpreted under the laws of the State of Texas, regardless of any conflict-of-law rules. This Contract will be specifically performable in Denton County, Texas.

**12.5. Entire Agreement.** This Contract contains the entire agreement of the parties. All understandings, discussions, and agreements previously made between the parties, written or oral, are superseded by this Contract, and neither party is relying on any warranty, statement, or representation not contained in this Contract.

**12.6. Amendment.** This Contract may not be altered, changed, or amended except by a written agreement signed by all parties.

**12.7. Counterparts.** This Contract may be executed in two or more counterparts, each of which will be deemed an original and all of which together will constitute one agreement.

**12.8. Date Computation.** If any significant date falls on a Saturday, Sunday, or federal or state holiday, the date will be deemed moved to the next business day that is not a Saturday, Sunday, or federal or state holiday. The term “business day” means a day that is not a Saturday, Sunday, or federal or state holiday.

**12.9. Contract Consideration.** In addition to the Earnest Money Deposit, Purchaser will pay to Seller the amount of One Thousand and No Cents (\$1,000.00) as independent contract consideration for Seller’s execution and delivery of this Contract and all of its provisions, including Purchaser’s right to terminate this Contract during the Review Period. This consideration is in addition to and independent of any other consideration or payment provided in this Contract and is nonrefundable to Purchaser.

**12.10. Confidentiality.** Before Closing, Seller and Purchaser will not disclose the content or substance of the terms, conditions, and provisions of this Contract to any person or entity without the other party’s written consent. However, nothing in this Section prohibits Purchaser from disclosing the terms of this Contract to Purchaser’s attorneys, accountants, lenders, engineers, and partners. The confidentiality provisions of this Section will not apply to any matters of public record or matters generally known to the public, or any disclosures made by Purchaser or Seller as required by law, ordinance, subpoena, court order, or regulation. Purchaser and Seller will give each other written notice before making any disclosure under a subpoena or court order.

**12.11. Assignment.** Purchaser will not assign, transfer, or convey its rights or obligations under this Contract or with respect to the Property without Seller’s written consent.

**12.12. Effective Date.** The date that Purchaser executes this Contract will be the Effective Date of this Contract.

**12.13. Construction.** This Contract is the result of negotiations between the parties, neither of whom has acted under any duress or compulsion, whether legal, economic, or otherwise. Accordingly, the terms and provisions of this Contract will be construed in accordance with their usual and customary meanings. Seller and Purchaser waive the application of any rule of law that would otherwise apply in the construction of this Contract that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Contract or any earlier draft of it.

**12.14. Exchange.** Seller may elect to participate in a tax-deferred exchange under the Internal Revenue Code. If Seller elects to participate, Purchaser will reasonably cooperate with the election; however, Purchaser will have no obligation to incur any cost or liability or to take title to any real property (other than Purchaser's acquisition of the Property under this Contract), and the Closing will not be conditioned on or unreasonably delayed by any exchange. If Seller elects to participate Seller will provide all documents requested from the other party at least three (3) business days before the Closing and will indemnify and hold Purchaser harmless from any claims, liabilities, or damages arising from the cooperation, and the indemnity obligation will expressly survive the termination or Closing of this Contract.

**12.15. Attorney Fees.** If it becomes necessary for either Seller or Purchaser to employ legal counsel or to bring an action at law or other proceeding to enforce any of the terms, covenants, or conditions of this Contract, the prevailing party in any action or proceeding will be entitled to recover its costs and expenses incurred, including its reasonable attorney fees, from the other party. The term "prevailing party" means the party that has succeeded on a significant issue in the litigation and achieved a benefit with respect to the claims at issue, taken as a whole, whether or not damages are actually awarded to that party.

**12.16. Survival Clause.** The provisions of Section 6.3, Article 7, and Article 10 of this Contract will survive the Closing for a period of six (6) months and remain in full force and effect between the parties for that period.

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**SELLERS:**

**EAGLE FARMS, INC.**, a Texas corporation

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
President

Signed on the \_\_\_\_\_ day of September, 2016.

**JOHN PORTER AUTO SALES, INC.**, a Texas corporation

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
President

Signed on the \_\_\_\_\_ day of September, 2016.

**PURCHASER:**  
**CITY OF DENTON, a Texas home-rule municipal corporation**

By: \_\_\_\_\_  
Howard Martin, Interim City Manager, under the authority  
of City of Denton Ordinance No. 2016 - \_\_\_\_\_

Signed on the \_\_\_\_\_ day of September, 2016.

**ATTEST:**  
**Jennifer Walters, City Secretary**

\_\_\_\_\_

**APPROVED AS TO FORM:**  
**Anita Burgess, City Attorney**

\_\_\_\_\_

**ACCEPTANCE BY TITLE COMPANY**

The undersigned title company, Republic Title of Texas, Inc. – Fort Worth Commercial Division, referred to in this Contract as the Title Company, acknowledges receipt of a fully executed copy (or executed counterparts) of the Contract, and accepts the obligations of the Title Company as stated in the Contract.

**TITLE COMPANY:**

**Republic Title of Texas, Inc. – Fort Worth Commercial Division**

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
President

Signed on the \_\_\_\_\_ day of September, 2016.

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

## LEGAL DESCRIPTION

### *Eagle Farms and John Porter Auto Sales Tract*

**BEING** a tract of land situated in the Gibson Myers Survey, Abstract No. 843, the Johnson, Green, Myers and Brummett Survey, Abstract No. 1699, the Moses H. Davis Survey, Abstract No. 377 and the William Wilburn Survey, Abstract No. 1419, City of Denton, Denton County, Texas, and being a part of a called 691.64 acre tract of land described in a Deed to Eagle Farms, Inc. and John Porter Auto Sales, Inc., as recorded in Document No. 93-077959 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

**BEGINNING** at a point for corner in the North line of the above cited 691.64 acre tract, said point being the Northeast corner of a called 5.700 acre tract of land described in a Deed to Everette Newland, as recorded in Document No. 2012-19340 of the Official Records of Denton County, Texas, said point also being in the center of Jim Christal Road, a variable width prescriptive right-of-way;

**THENCE** North 89°21'52" East along the North line of said 691.64 acre tract, and along said Jim Christal Road, for a distance of 1245.67 feet to a PK nail set for corner;

**THENCE** North 89°31'54" East continuing along the North line of said 691.64 acre tract, and along said Jim Christal Road, for a distance of 693.00 feet to a PK nail set for corner at the beginning of a non-tangent curve to the right;

**THENCE** in a Southeasterly direction, along the North line of said 691.64 acre tract and along said Jim Christal Road, and along said non-tangent curve to the right having a central angle of 18°20'00", a radius of 1059.69 feet, a chord bearing of South 82°18'06" East, a chord distance of 337.63 feet and an arc length of 339.07 feet to a PK nail set for corner at the end of said curve;

**THENCE** South 72°18'58" East continuing along the North line of said 691.64 acre tract, and along said Jim Christal Road, for a distance of 172.83 feet to a PK nail set for corner in the West line of a called 24.265 acre tract of land described as Tract 2 in a Deed to Lybbert Family Trust, as recorded in Document No. 2009-5235 of the Official Records of Denton County, Texas,

**THENCE** South 00°00'04" East departing the North line of said 691.64 acre tract and said Jim Christal Road, and along the West line of said 24.265 acre tract, for a distance of 84.71 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner at the Southwest corner of said 24.265 acre tract;

**THENCE** South 88°09'34" East along the South line of said 24.265 acre tract, for a distance of 191.10 feet to a 5/8 inch iron rod found for the Southeast corner of said 24.265 acre tract and the Southwest corner of a called 2.95 acre tract of land described in a Deed to JHR Construction Co., Inc., as recorded in Volume 4457, Page 1807 of the Real Property Records of Denton County, Texas;

**THENCE** South 86°34'38" East along the South line of said 2.95 acre tract, for a distance of 264.31 feet to a point for the Southeast corner of said 2.95 acre tract;

**THENCE** North 00°20'53" West along the East line of said 2.95 acre tract, for a distance of 8.53 feet to a point for corner near the centerline said Jim Christal Road and the North line of said 691.64 acre tract;

**THENCE** South 87°21'11" East along the North line of said 691.64 acre tract, and along said Jim Christal Road, for a distance of 644.00 feet to a point for corner;

**THENCE** South 86°41'11" East continuing along the North line of said 691.64 acre tract, and along said Jim Christal Road, for a distance of 555.19 feet to a point for corner;

**THENCE** South 85°46'07" East continuing along the North line of said 691.64 acre tract, and along said Jim Christal Road, for a distance of 112.81 feet to a point for the Northwest corner of a called 23.076 acre tract of land described in a Deed to the City of Denton, Texas, as recorded in Document No. 2010-9442 of the Official Records of Denton County, Texas;

**THENCE** South 08°12'59" East departing the North line of said 691.64 acre tract and said Jim Christal Road, and along the West line of said 23.076 acre tract, for a distance of 1264.36 feet to a point for the Southwest corner of same, said point also being in the North line of a called 9.679 acre tract of land described in a Judgment as Cause No. CV-92-00522-C, and being recorded in Document No. 94-071012 of the Real Property Records of Denton County, Texas;

**THENCE** North 89°46'03" West along the North line of said 9.679 acre tract, for a distance of 145.10 feet to a point for the Northwest corner of same;

**THENCE** South 07°25'04" East along the West line of said 9.679 acre tract, passing the Southwest corner of same and an interior ell corner of said 691.64 acre tract at a distance of 504.51 feet, and continuing along the East line of said 691.64 acre tract for a total distance of 2015.34 feet to a 1/2 inch iron rod with cap stamped "Vannoy 563-7101" found for an interior Southeast corner of said 691.64 acre tract;

**THENCE** North 89°21'21" West continuing along the East line of said 691.64 acre tract, for a distance of 50.07 feet to a 1/2 inch iron rod with cap stamped "Vannoy 563-7101" found for an interior ell corner of same, said point being in the Northwest line of Tom Cole Road;

**THENCE** South 24°52'16" West continuing along the East line of said 691.64 acre tract and the Northwest line of said Tom Cole Road, for a distance of 660.00 feet to a 1/2 inch iron rod found for the most Southerly Southeast corner of said 691.64 acre tract;

**THENCE** North 89°27'53" West along the South line of said 691.64 acre tract and the North line of said Tom Cole Road, for a distance of 1441.63 feet to a 1/2 inch iron rod found for the most Easterly Northeast corner of a called 116.088 acre tract of land described in a Deed to Nucon Steel Commercial Corporation, as recorded in Volume 5255, Page 5740 of the Real Property Records of Denton County, Texas;

**THENCE** North 88°50'56" West along the South line of said 691.64 acre tract and the most Easterly North line of said 116.088 acre tract, for a distance of 297.54 feet to a 1/2 inch iron rod found for the most Southerly Southwest corner of said 691.64 acre tract and an interior ell corner of said 116.088 acre tract;

**THENCE** North 00°13'05" West along the most Southerly West line of said 691.64 acre tract and the most Northerly East line of said 116.088 acre tract, for a distance of 1004.53 feet to a 1/2 inch iron rod with cap stamped "Vannoy 563-7101" found for the most Northerly Northeast corner of said 116.088 acre tract and an interior ell corner of said 691.64 acre tract;

**THENCE** North 89°50'49" West along the South line of said 691.64 acre tract and the North line of said 116.088 acre tract, for a distance of 2358.32 feet to a 1/2 inch iron rod found for corner at an interior Southwest corner of said 691.64 acre tract and the Northwest corner of said 116.088 acre tract, said point also being in the East line of a called 152 acre tract of land described in a Deed to Walter B. (Bud) Wolf, as recorded in Volume 533, Page 541 of the Deed Records of Denton County, Texas;

**THENCE** North 00°26'46" East along an interior West line of said 691.64 acre tract and the East line of said 152 acre tract, for a distance of 599.88 feet to a 1/2 inch iron rod with cap stamped "Vannoy 563-7101" found for corner at an interior ell corner of said 691.64 acre tract and the Northeast corner of said 152 acre tract;

**THENCE** North 89°19'25" West along the South line of said 691.64 acre tract and the North line of said 152 acre tract, passing a 5/8 inch iron rod with cap stamped "TNP" set for reference at a distance of 783.81 feet, and continuing along said line for a total distance of 845.95 feet to a point for corner in the center of Hickory Creek, said point being the Southeast corner of a called 10.036 acre tract of land described in a Deed to Charles L. Gregory and wife, Mary R. Gregory, as recorded in Document No. 94-038707 of the Real Property Records of Denton County, Texas, from which a 1/2 inch iron rod found for the Southwest corner of said 10.036 acre tract bears North 89°19'25" West a distance of 806.13 feet;

**THENCE** North 42°03'00" East departing the South line of said 691.64 acre tract, and along the center of said Hickory Creek, for a distance of 253.13 feet to a point for corner, from which a 5/8 inch iron rod with cap stamped "TNP" set for reference bears South 47°57'34" East a distance of 62.00 feet;

**THENCE** North 27°10'39" East continuing along the center of said Hickory Creek, for a distance of 658.88 feet to a point for corner in the South line of a called 18.000 acre tract of land described in a Deed to Everette Newland and wife, Jennifer Newland, as recorded in Document No. 2008-58941 of the Official Records of Denton County, Texas;

**THENCE** South 79°38'43" East departing said Hickory Creek, and along the South line of said 18.000 acre tract, passing a 5/8 inch iron rod with cap stamped "TNP" set for reference at a distance of 62.00 feet, and continuing along the South line of said 18.000 acre tract for a total distance of 154.34 feet to a 1/2 inch iron rod found for the Southeast corner of said 18.000 acre tract and the Southwest corner of the above cited 5.700 acre tract;

**THENCE** South 87°40'32" East along the South line of said 5.700 acre tract, for a distance of 128.07 feet to a 1/2 inch iron rod with cap stamped "RPLS 4857" found for the Southeast corner of said 5.700 acre tract;

**THENCE** North 00°42'44" East along the East line of said 5.700 acre tract, passing a 1/2 inch iron rod with cap stamped "RPLS 4857" found for reference in the South line of said Jim Christal Road at a distance of 1688.82 feet, and continuing



along said East line for a total distance of 1712.82 feet to the **POINT OF BEGINNING**, and containing 349.644 acres of land, **LESS, SAVE AND EXCEPT** a 6.772 acre tract described herein as SAVE AND EXCEPT TRACT ONE and a 2.403 acre tract described herein as SAVE AND EXCEPT TRACT TWO, leaving a net acreage of 340.469 acres of land, more or less. Said SAVE AND EXCEPT TRACTS ONE AND TWO being more particularly described as follows:

**SAVE AND EXCEPT TRACT ONE**

**BEING** a 6.772 acre tract of land situated in the Johnson, Green, Myers and Brummett Survey, Abstract No. 1699, City of Denton, Denton County, Texas, and being known as Lot 1, Block 1 of Krum Tap Electrical Switch Station, per Plat recorded in Document No. 2010-3 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**COMMENCING** at a point for corner in the North line of called 691.64 acre tract of land described in a Deed to Eagle Farms, Inc. and John Porter Auto Sales, Inc., as recorded in Document No. 93-077959 of the Real Property Records of Denton County, Texas, said point being the Northeast corner of a called 5.700 acre tract of land described in a Deed to Everette Newland, as recorded in Document No. 2012-19340 of the Official Records of Denton County, Texas, said point also being in the center of Jim Christal Road, a variable width prescriptive right-of-way;

**THENCE** North 89°21'52" East along the North line of said 691.64 acre tract, and along said Jim Christal Road, for a distance of 1118.72 feet to a point for corner;

**THENCE** South 19°26'51" West departing the North line of said 691.64 acre tract and said Jim Christal Road, passing a 1/2 inch iron rod found for the Northeast corner of a called 1.33 acre tract of land described in a Deed to the City of Denton, Texas, as recorded in Volume 1185, Page 999 of the Deed Records of Denton County, Texas, at a distance of 25.32 feet, and continuing along the East line of said 1.33 acre tract for a total distance of 164.33 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner at the most Easterly North corner of a called 1.069 acre tract of land described in a Deed to the City of Denton, Texas, as recorded in Document No. 2007-108566 of the Official Records of Denton County, Texas;

**THENCE** South 00°36'34" East departing the East line of said 1.33 acre tract, and along the East line of said 1.069 acre tract, for a distance of 93.36 feet to a 1/2 inch iron rod found for corner;

**THENCE** South 19°27'37" West continuing along the East line of said 1.069 acre tract, for a distance of 132.79 feet to a 1/2 inch iron rod with cap stamped "Arthur" found for the Southeast corner of said 1.069 acre tract;

**THENCE** South 11°07'48" West departing the Southeast corner of said 1.069 acre tract, for a distance of 116.38 feet to a 5/8 inch iron rod found for corner at the **POINT OF BEGINNING** for the herein described tract, said point being the Northwest corner of the above cited Lot 1;

**THENCE** North 89°39'51" East along the North line of said Lot 1, for a distance of 500.21 feet to a 5/8 inch iron rod found for the Northeast corner of same;

**THENCE** South 00°20'53" East along the East line of said Lot 1, for a distance of 500.10 feet to a 5/8 inch iron rod found for the Southeast corner of same;

**THENCE** South 89°39'01" West along the South line of said Lot 1, for a distance of 679.36 feet to a 5/8 inch iron rod found for the Southwest corner of same;

**THENCE** North 19°21'24" East along the West line of said Lot 1, for a distance of 531.34 feet to the **POINT OF BEGINNING**, and containing 6.772 acres of land, more or less;

**SAVE AND EXCEPT TRACT TWO**

**BEING** a 2.403 acre tract of land situated in the Johnson, Green, Myers and Brummett Survey, Abstract No. 1699, City of Denton, Denton County, Texas, and being known as all of that certain 1.33 acre tract of land described in a Deed to the City of Denton, Texas, as recorded in Volume 1185, Page 999 of the Deed Records of Denton County, Texas, and all of that certain 1.069 acre tract of land described in a Deed to the City of Denton, Texas, as recorded in Document No. 2007-108566 of the Official Records of Denton County, Texas, and being more particularly described as follows:

**COMMENCING** at a point for corner in the North line of called 691.64 acre tract of land described in a Deed to Eagle Farms, Inc. and John Porter Auto Sales, Inc., as recorded in Document No. 93-077959 of the Real Property Records of Denton County, Texas, said point being the Northeast corner of a called 5.700 acre tract of land described in a Deed to Everette Newland, as recorded in Document No. 2012-19340 of the Official Records of Denton County, Texas, said point also being in the center of Jim Christal Road, a variable width prescriptive right-of-way;

**THENCE** North 89°21'52" East along the North line of said 691.64 acre tract, and along said Jim Christal Road, for a distance of 1118.72 feet to a point for corner;

**THENCE** South 19°26'51" West departing the North line of said 691.64 acre tract and said Jim Christal Road, for a distance of 25.32 feet to a 1/2 inch iron rod found for corner at the **POINT OF BEGINNING** for the herein described tract, said point being the Northeast corner of the above cited 1.33 acre tract;

**THENCE** South 19°26'51" West along the East line of said 1.33 acre tract, for a distance of 139.01 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner at the most Easterly North corner of the above cited 1.069 acre tract;

**THENCE** South 00°36'34" East departing the East line of said 1.33 acre tract, and along the East line of said 1.069 acre tract, for a distance of 93.36 feet to a 1/2 inch iron rod found for corner;

**THENCE** South 19°27'37" West continuing along the East line of said 1.069 acre tract, for a distance of 132.79 feet to a 1/2 inch iron rod with cap stamped "Arthur" found for the Southeast corner of said 1.069 acre tract;

**THENCE** South 89°22'11" West along the South line of said 1.069 acre tract, for a distance of 253.91 feet to a 1/2 inch iron rod with cap stamped "Arthur" found for the Southwest corner of said 1.069 acre tract;

**THENCE** North 00°36'20" West along the West line of said 1.069 acre tract, for a distance of 348.72 feet to a 1/2 inch iron rod with cap stamped "Arthur" found for the Northwest corner of said 1.069 acre tract, said point being in the South line of said Jim Christal Road;

**THENCE** North 89°23'07" East along the North line of said 1.069 acre tract and the South line of said Jim Christal Road, passing a 1/2 inch iron rod found for the Northeast corner of said 1.069 acre tract and the Northwest corner of said 1.33 acre tract at a distance of 60.11 feet, and continuing along the North line of said 1.33 acre tract and the South line of said Jim Christal Road, for a total distance of 347.13 feet to the **POINT OF BEGINNING**, and containing 2.403 acres of land, more or less.

**EXHIBIT B**  
**SURVEYOR'S CERTIFICATE**

## **SURVEYOR'S CERTIFICATE**

To: City of Denton, a Texas home-rule municipal corporation ("Purchaser"), and Republic Title of Texas, Inc., ("Title Company"):

This is to certify to City of Denton, a Texas home-rule municipal corporation ("Purchaser"), Eagle Farms, Inc., a Texas corporation, and John Porter Auto Sales, Inc., a Texas corporation, (collectively "Seller"), and Republic Title of Texas, Inc., ("Title Company") that this map or plat and the survey on which it is based were made in accordance with Texas Society of Professional Surveyors requirements for a Category 1-A, Condition III land title survey of the Property, and under the Accuracy Standards as adopted by ALTA, NSPS, and ACSM and in effect on the date of this certification. The undersigned certifies that the Positional Uncertainties resulting from the survey measurements made on the survey do not exceed the allowable Positional Tolerance. The undersigned further certifies to Purchaser and Title Company that (a) this survey is true and correct and was made on the ground under my supervision as per the field notes shown hereon and correctly shows the boundary lines and dimensions and area of the land indicated hereon and each individual parcel thereof indicated hereon; (b) all monuments shown hereon actually exist, and the location, size, and type of such monuments are correctly shown; (c) the subject Property described in this survey is the same land as described in the title commitment described below; (d) this survey and the information, courses, and distances shown on it are correct; (e) this survey correctly shows the size, location, and type of any buildings, structures, other improvements, and visible items on the subject Property and that any buildings and improvements are within the boundary lines and applicable setback lines of the subject Property; (f) this survey correctly shows the location and dimensions of all alleys, streets, roads, rights of way, easements, building setback lines, and other matters of record of which the undersigned has been advised affecting the subject Property according to the legal description in such easements and other matters (with instrument, book, and page number indicated); (g) except as shown, there are no visible (1) improvements, easements, rights of way, party walls, drainage ditches, streams, uses, discrepancies, or conflicts, (2) party walls or encroachments onto adjoining premises, streets, or alleys by any of the buildings, structures, or other improvements, (3) encroachments onto the subject Property by buildings, structures, or other improvements on adjoining premises, or (4) encroachments on any easement, building setback line, or other restricted area by any buildings, structures, or other improvements on the subject Property; (h) the distance from the nearest intersecting street or road is as shown hereon; (i) the subject Property abuts a dedicated public street or road as shown hereon; (j) any discharge into streams, rivers, or other conveyance system is shown on this survey; (k) if the subject Property consists of two or more parcels having common boundaries, those parcels are contiguous along the common boundaries; (l) except as shown, no part of the Property is located in a 100-year flood plain or in an identified "flood prone area," as defined under the Flood Disaster Protection Act of 1973, as amended, as reflected by Flood Insurance Rate Map Panel No. \_\_\_\_\_, dated \_\_\_\_\_, which covers the area in which the Property is situated, and this survey correctly indicates the zone designation of any area as being in the 100-year flood plain or "flood prone area"; (m) no portion of the subject Property lies within a delineated wetlands area under federal, state, or local law or policy; (n) except as shown on this survey, the subject Property does not serve any adjoining premises for drainage, utilities, or ingress or egress; (o) the record description of the subject Property forms a mathematically closed figure; and (p) the subject

Property has a tax map designation separate and distinct from that of any other premises, and the subject Property is a separate, legally subdivided parcel. The undersigned has received and examined a copy of Title Insurance Commitment No. \_\_\_\_\_ issued by Title Company for the Property as well as a copy of each instrument listed therein, and the location of any matter shown thereon, to the extent it can be located, has been shown on this survey.

[Signature of Surveyor]

[Printed Name of Surveyor]

[R.P.S. No. of Surveyor]

[Date Signed]

[Seal]

**EXHIBIT C**  
**SPECIAL WARRANTY DEED**

## **Special Warranty Deed**

**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.**

Date:

Grantor: Eagle Farms, Inc., a Texas corporation, and John Porter Auto Sales, Inc., a Texas corporation

Grantor's Mailing Address:

John Porter Auto Sales, Inc.  
1801 Hinkle Drive, Suite 150  
Denton, Texas 76201

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

Grantee's Mailing Address:

215 E. McKinney St.  
Denton, Texas 76201

Consideration: Cash and other good and valuable consideration, the receipt and sufficiency of where are hereby acknowledged

Property (including any improvements, rights, privileges, hereditaments and appurtenances thereon on in any way appertaining thereto):

See attached Exhibit A.

Reservations from Conveyance:

1. For Grantor and Grantor's successors and assigns forever, a reservation of all subsurface oil, gas, and minerals of every kind and character, including, without limitation, coal, lignite coal, coal bed methane gas, sulfur, uranium and any other mineral substance now or hereafter of any commercial value (the "Minerals") in and under and that may be produced or otherwise extracted in any way from the Property. If the Property is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits from it.

2. Grantor waives the right to enter on to the surface of the Property in conducting operations of whatsoever nature with respect to the exploration for,

exploitation of, mining and production, processing, transporting, and marketing the Minerals and that may be produced or otherwise extracted in any way from the Property or in connection with the conduct of other activities associated with its ownership of the Minerals in the Property; provided, however, the foregoing waiver of surface rights shall not be construed as a waiver of the right of Grantor to exploit, explore for, develop, mine, or produce such Minerals with wells drilled on the surface of lands other than the Property or by pooling its oil, gas and mineral interests with lands adjoining the Property in accordance with the laws and regulations of the State of Texas. Grantor and its contractors, agents and affiliated entities shall have the right to enter the subsurface of the Property with a subsurface horizontal or directional wellbore in an effort to explore for and develop the Minerals under the Property.

Exceptions to Conveyance and Warranty:

See attached Exhibit "B".

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, 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, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

**GRANTEE HAS RELIED SOLELY UPON ITS OWN EXAMINATIONS AND INVESTIGATIONS IN PURCHASING THE PROPERTY. GRANTEE IS ACCEPTING THE PROPERTY "AS IS" AND "WHERE IS," AND WITH ALL FAULTS, SUBJECT TO THE SPECIAL WARRANTY OF TITLE SET FORTH HEREIN.**

--- This space left blank intentionally ---



**GRANTOR:**  
**EAGLE FARMS, INC.,** a Texas corporation

By: \_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Printed Name  
  
\_\_\_\_\_  
President

**JOHN PORTER AUTO SALES, INC.,** a Texas corporation

By: \_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Printed Name  
  
\_\_\_\_\_  
President

**ACKNOWLEDGMENTS**

**State of Texas**       §  
**Denton County**     §

This instrument was acknowledged before me on the \_\_\_\_ day of November, 2016 by \_\_\_\_\_ [name of officer] as \_\_\_\_\_ [title] of Eagle Farms, Inc., a Texas corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**State of Texas**       §  
**Denton County**     §

This instrument was acknowledged before me on the \_\_\_\_ day of November, 2016 by \_\_\_\_\_ [name of officer] as \_\_\_\_\_ [title] of John Porter Auto Sales, Inc., a Texas corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**GRANTEE:**

**CITY OF DENTON**, a Texas home-rule municipal corporation

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

Howard Martin, Interim City Manager, under the authority  
of City of Denton Ordinance No. 2016 - \_\_\_\_\_

**ATTEST:**

**Jennifer Walters, City Secretary**

\_\_\_\_\_

**APPROVED AS TO FORM:**

**Anita Burgess, City Attorney**

\_\_\_\_\_

**ACKNOWLEDGMENTS**

**State of Texas**           §

**Denton County**       §

This instrument was acknowledged before me on the \_\_\_\_\_ day of November, 2016 by  
\_\_\_\_\_ [name of officer] as \_\_\_\_\_ [title] of Eagle  
Farms, Inc., a Texas corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

After recording, return to:

Real Estate and Capital Support  
City of Denton  
Service Center Complex  
901-B Texas St.  
Denton, Texas 76209

**EXHIBIT A TO SPECIAL WARRANTY DEED**  
**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT B TO SPECIAL WARRANTY DEED  
EXCEPTIONS TO CONVEYANCE AND WARRANTY**