

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

AN ORDINANCE OF THE CITY OF DENTON, TEXAS AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE A CONTRACT OF SALE BY AND BETWEEN LISA COOKE (“OWNER”) AND THE CITY OF DENTON, TEXAS (“CITY” OR “BUYER”), REGARDING THE SALE AND PURCHASE OF FEE SIMPLE TO AN APPROXIMATELY 0.344 ACRE TRACT, MORE OR LESS, SITUATED IN THE EUGENE PUCHALSKI SURVEY, ABSTRACT NO. 996, DENTON COUNTY, TEXAS, FOR THE PURCHASE PRICE OF TWO HUNDRED TWENTY EIGHT THOUSAND DOLLARS AND NO CENTS (\$228,000.00), AND OTHER CONSIDERATION, AS PRESCRIBED IN THE CONTRACT OF SALE; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the above-captioned tract, containing approximately 0.344 acres, is located at 2291 Scripture Street and is slated for partial acquisition and bisection of the residential structure situated thereupon, as a component part of the upcoming Bonnie Brae – North Widening and Improvements project – Phase 5 (the “Project”); and

WHEREAS, the affected Owner has engaged city staff and desires to the sell to the City the entire 0.344 acre property tract, in advance of the formal land rights acquisition stage of the pending Project; and

WHEREAS, approval of the purchase under consideration authorizes staff to proceed to closing the purchase transaction with the Owner; and

WHEREAS, the City Council of the City of Denton hereby finds that the Contract of Sale between the City and Lisa Cooke serves a municipal and public use and is in the public interest; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings set forth in the preamble of this Ordinance are incorporated by reference into the body of this Ordinance as if fully set forth herein.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute the Contract of Sale, attached hereto as Exhibit “A” and incorporated herein by reference, and to carry out the duties and responsibilities of the City under the Contract of Sale, including the expenditure of funds as provided in the Contract.

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

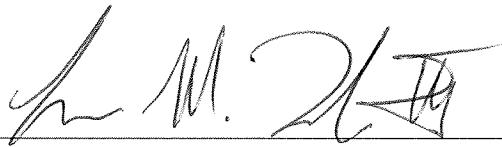
PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
AARON LEAL, INTERIM CITY ATTORNEY

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

# Exhibit "A"

## CONTRACT OF SALE

STATE OF TEXAS           §

COUNTY OF DENTON       §

### 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 \_\_\_\_\_, 2017, effective as of the date of execution hereof by Buyer, as defined herein (the "Effective Date"), by and between Lisa Cooke F/K/A Lisa Lynn Dennie (referred to herein as "Seller") and the City of Denton, Texas, a Home Rule Municipal Corporation of Denton County, Texas (referred to herein as "Buyer").

### RECITALS

WHEREAS, Seller owns that certain tract of land being more particularly described on Exhibit "A", attached hereto and made a part hereof for all purposes, being located in Denton County, Texas (the "Land"); and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires 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 hereinafter set forth, and upon the terms, conditions and provisions herein contained, and subject to the reservations herein, 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 herein, shall reserve, for themselves and itself, their heirs, devisees, successors and assigns, all oil, gas and other minerals in, on and under and that may be produced from the Property. Seller, their heirs, devisees, 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 herein, 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.

As used herein, the term “minerals” shall include oil, gas and all associated hydrocarbons, and shall exclude (i) all substances 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 which are at or near the surface of the Property. The intent of the parties hereto is that the meaning of the term “minerals” as utilized herein, shall be in accordance with that set forth in *Reed v. Wylie*, 597 S.W.2d 743 (Tex. 1980).

As used herein, 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.

It is understood that the Property, or a portion thereof, may be subject to an existing oil and gas lease and that such oil and gas lease, to the extent it is valid and subsisting, shall not be subject to such surface use prohibitions, to the extent provided by law. However, (i) such oil and gas lease shall be considered an Exception, as defined below; and (ii) nothing contained herein shall be deemed as recognizing the validity or subsistence of such lease and/or operate as a revivor thereof.

## **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 Two Hundred Twenty Eight Thousand and No/100 Dollars (\$228,000.00) (the “Purchase Price”).

**2.02 Earnest Money.** Buyer shall deposit the sum of Five Hundred and No/100 Dollars (\$500.00), as Earnest Money (herein so called) with Capital Title of Texas, LLC, 620 West Hickory, Denton, TX 76201, (the “Title Company”), as escrow agent, within fourteen (14) calendar days after the Effective Date hereof. 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 hereunder is consummated in accordance with the terms and the provisions hereof, 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 fourteen (14) 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 hereby 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, at Buyer's expense, 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 herein 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 and other matters provided in items 1-4, 6a, 7a, 8, 11,13,16, 18, and 19 of Table A of the ALTA Minimum Standard Detail Requirements. 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. Notwithstanding the Survey of the Property, the Purchase Price for the Property, as prescribed by Section 2.01, above, shall not be adjusted in the event the Survey shall determine the Property to be either larger or smaller than that depicted in Exhibit "A", attached hereto.

**3.03 Review of Title Commitment, Survey and Exception Documents.** Buyer shall have a period of fifteen (15) 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 twenty (20) 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 twenty (20) calendar day period, as may be extended by Buyer, in its sole discretion, 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 (herein so called), 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”, unless otherwise agreed by Buyer;
- (d) no liens will be shown on Schedule B.

Notwithstanding the enumeration of the stated 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 appraisals, 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, if requested by 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 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.
- (g) 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, except a 1% commission to Keller Williams Realty to be paid by Seller from Seller's funds at Closing.
- (h) 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, including without limitation, all personal property of any such tenants or parties, on or before the date of Closing.
- (i) 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) 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 thereto (the "Leases").
- (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, or claims related thereto, 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.
- (d) On or before Closing, Seller shall remove (i) any waste material or debris that are located upon, or may accumulate or otherwise be placed on the Property (the "Waste Material"), from the Property and dispose of same in accordance with all applicable statutes, regulations, rules, orders and ordinances; and (ii) all personal property from the Property.

It is expressly stipulated that (i) the Waste Material shall be deemed at all times the property of Seller; and (ii) Buyer may retain, destroy, or dispose of any property, of any kind or type, left or remaining on the Property at Closing (the "Abandoned Property"), without liability of any kind to Buyer and without payment of consideration of any kind to Seller. In the event Buyer shall elect to

store said Abandoned Property, Buyer may store such Abandoned Property in the name, and at the expense, of Buyer.

**5.02.A. Warranty of Buyer; Property Condition.** Buyer represents and warrants to Seller that it has made, or will make prior to Closing, an independent inspection and evaluation of the Property and acknowledges that Seller has made no statements or representations concerning the present or future value of the Property, or the condition, including the environmental condition, of the Property.

Except as otherwise specifically represented and warranted by Seller in this Contract, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED, STATUTORY, OR IMPLIED, AS TO THE VALUE, QUALITY, QUANTITY, PHYSICAL AND ENVIRONMENTAL CONDITION OF THE PROPERTY AND/OR MATERIALS CONTAINED OR LOCATED IN, ON OR UNDER THE PROPERTY, THE NATURE OF THE PAST OR HISTORIC USE OF THE PROPERTY, AND/OR MERCHANTABILITY OR FITNESS FOR PURPOSE OF ANY OF THE PROPERTY. Buyer further acknowledges that it has relied solely upon its independent evaluation and examination of the Property, and public records relating to the Property and the independent evaluations and studies based thereon. Seller makes no warranty or representation as to the accuracy, completeness or usefulness of any information furnished to Buyer, if any, whether furnished by Seller or any third party. Seller assumes no liability for the accuracy, completeness or usefulness of any material furnished by Seller, if any, and/or any other person or party. Reliance on any material so furnished is expressly disclaimed by Buyer, and shall not give rise to any cause, claim or action against Seller.

**5.03 Survival Beyond Closing.** Notwithstanding anything to the contrary contained in this Contract, the representations, warranties, covenants and agreements of Seller and Buyer 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 (herein so called) 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 (herein sometimes called), shall be forty five (45) 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 herein, 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 hereto as Exhibit "B", subject only to the Permitted Exceptions, if any, duly executed by Seller and acknowledged;
  - (iii) 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 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. The following item shall be adjusted or prorated between Seller and Buyer with respect to the Property:

- (a) 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. Ad valorem tax for the calendar year in which the Closing shall occur shall be tendered under *Texas 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 (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. Seller is responsible for paying fees, costs and expenses identified herein as

being the responsibility of Seller. Buyer is responsible for paying all other fees, costs and expenses related to Closing.

## **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 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 remedy 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 and received, 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:

LISA COOKE  
1309 SAN GABRIEL DR.  
DENTON, TX. 76205

BUYER:

City of Denton  
Paul Williamson  
Real Estate Manager  
901-A Texas Street  
Denton, Texas 76209  
Telecopy: (940) 349-8951

Copies to:

For Seller:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telecopy: \_\_\_\_\_

For Buyer:

Aaron Leal, Interim City Attorney  
City Attorney's Office  
215 E. McKinney  
Denton, Texas 76201  
Telecopy: (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 FOR ANY ACTION BROUGHT WITH RESPECT HERETO, SHALL LIE 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 devisees, heirs, 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 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 (i) in the case of damage, all insurance proceeds, if any; and (ii) in the case of eminent domain, all proceeds paid for the Property related to the eminent domain proceedings.

Buyer shall have 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 to 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, in form and substance satisfactory to Buyer, 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 hereby. 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 hereby delegated by Buyer, pursuant to action by the City Council of Denton, Texas, to Todd Hileman, City Manager 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 hereto 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:

  
\_\_\_\_\_  
Lisa Cooke F/K/A Lisa Lynn Dennie

Executed by Seller on the 12 day of July 2017.

BUYER:

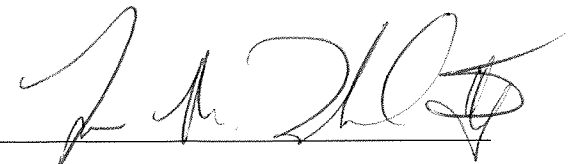
By: \_\_\_\_\_  
TODD HILEMAN, CITY MANAGER

Executed by Buyer on the \_\_\_\_\_ day of \_\_\_\_\_ 2017

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
AARON LEAL, INTERIM 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 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:

Capital Title of Texas, LLC  
620 W. Hickory Street  
Denton, Texas 76201

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

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

Title: \_\_\_\_\_

Contract receipt date: \_\_\_\_\_, 2017

**EXHIBIT "A"**  
**to**  
**Contract of Sale**  
**Legal Description**

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All that certain lot, tract or parcel of land situated in the City of Denton, Denton County, Texas, being a part of a tract of land out of the E. Puchalski Survey conveyed by J. M. Crowley to C. S. Wilkins, by deed recorded in Volume 124, page 271, Deed Records of Denton County, Texas, and more particularly described as follows:

BEGINNING at a stake at the Northeast corner of a tract of land conveyed by Ben C. Ivey and wife to Dr. M. C. Sheppard said tract being described in said deed which is of record in Volume 337, page 480, Deed Records of Denton County, Texas, and being in the South boundary line of Scripture Street;

THENCE West along the South boundary line of Scripture Street 100 feet for corner, same being the Northeast corner of a tract conveyed by Sheppard to Ponder;

THENCE South along the East line of said Ponder lot, 150 feet for corner;

THENCE East parallel with the South line of Scripture Street 100 feet for corner, same being in the East boundary line of said tract conveyed by Ben C. Ivey to M. C. Sheppard as aforesaid;

THENCE North along the East boundary line of said tract, 150 feet to the place of beginning.

**EXHIBIT "B"**  
**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 Lisa Cooke F/K/A Lisa Lynn Dennie (herein collectively called "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 (herein called "Grantee"), 215 E. McKinney, Denton, Texas 76201, the receipt and sufficiency of which are hereby acknowledged and confessed, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY, unto Grantee all the real property in Denton County, Texas being particularly described on Exhibit "A", attached hereto and made a part hereof 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 thereto (collectively, the "Property").

Grantor, subject to the limitation of such reservation made herein, reserves, for themselves, their heirs, devisees, successors and assigns all oil, gas and other minerals in, on and under and that may be produced from the Property. Grantor, their heirs, devisees,

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 herein, 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.

As used herein, the term "other minerals" shall include oil, gas and all associated hydrocarbons and shall exclude (i) all substances 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 which are at or near the surface of the Property. The intent of the parties hereto is that the meaning of the term "other minerals" as utilized herein, shall be in accordance with that set forth in *Reed v. Wylie*, 597 S.W.2d 743 (Tex. 1980).

As used herein, 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.

Grantor hereby assigns to Grantee, without recourse or representation, any and all claims and causes of action that Grantor may have for or related to any defects in, or injury to, the Property.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee and Grantee's successors and assigns forever; and Grantor does hereby 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 \_\_\_\_\_, 2017.

\_\_\_\_\_  
Lisa Cooke F/K/A Lisa Lynn Dennie

**ACKNOWLEDGMENT**

THE STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2017 by  
Lisa Cooke F/K/A Lisa Lynn Dennie.

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

My commission expires: \_\_\_\_\_

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

Property Tax Bills To:  
City of Denton Finance Department  
215 E. McKinney Street  
Denton, Texas 76201

Exhibit "A"  
To  
Special Warranty Deed

Legal Description

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All that certain lot, tract or parcel of land situated in the City of Denton, Denton County, Texas, being a part of a tract of land out of the E. Puchalski Survey conveyed by J. M. Crowley to C. S. Wilkins, by deed recorded in Volume 124, page 271, Deed Records of Denton County, Texas, and more particularly described as follows:

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