

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the “*Agreement*”) is made and dated as of this 17th day of May, 2016, by and between CITY OF MCKINNEY, TEXAS, a Texas home-rule municipal corporation, (“*Buyer*”), and ROGER PELTON, an individual, ARLENE PELTON, an individual, and the PELTON FAMILY LIMITED PARTNERSHIP, a Texas family limited partnership (collectively “*Seller*”).

WITNESSETH:

WHEREAS, Seller is the owner of an approximately 62.1417 acre tract of land and having an address of 1291 Gray Branch Road, McKinney, Texas, as more particularly described on Exhibit A attached hereto and incorporated herein by reference, and Seller is the owner of the land, buildings, improvements and structures thereon (all being hereinafter collectively referred to as the “*Real Property*”), subject to the liens and other exceptions thereto; and

WHEREAS, Seller is the owner of certain personal property located on and used in connection with the Real Property, however, such personal property is not and shall not be conveyed to Buyer. Seller shall have the right to remove as much of the personal property as it desires prior to the delivery of possession of the Real Property as provided herein (such personal property being hereinafter collectively referred to as the “*Personal Property*”); and

WHEREAS, the Real Property and the Personal Property comprise a rural residential tract located in the City of McKinney, County of Collin, State of Texas (the Real Property and the Personal Property being hereinafter sometimes collectively referred to as the “*Property*”); and

WHEREAS, Buyer desires to buy and Seller desires to sell the Property, on the terms and conditions herein set forth; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants of the parties hereinafter expressed, it is hereby agreed as follows:

ARTICLE I

PURCHASE AND SALE

1.1 Agreement to Sell and Purchase. In accordance with and subject to the terms and conditions hereof, on the date of Closing (as hereinafter defined), Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property, less and except that portion of the Property which is encumbered by a cellular tower easement and any related access easement to said cellular tower easement (“*Cell Tower Property*”).

1.2 Purchase Price. The purchase price (the “*Purchase Price*”) to be paid to Seller for the sale of the Real Property to Buyer as provided for herein shall be Three Million Four Hundred and Ninety Thousand and no/100 Dollars (\$3,490,000.00).

The Purchase Price shall be paid by Buyer, subject to credit, debit and adjustment as hereinafter provided and subject to all the terms and conditions herein contained, as follows:

(a) On or before May 20, 2016, Buyer shall deposit as earnest money in escrow the sum of Five Thousand and no/100 Dollars (\$5,000) in cash by wire transfer to the account below (such sum, together with any interest thereon, being hereinafter collectively referred to and held as the “*Deposit*”), with Chapin Title Company, 614 N. Travis St., Sherman, TX 75090 (being herein sometimes referred to as the “*Title Company*”). The wiring instructions for the Title Company are attached hereto.

Notwithstanding anything to the contrary and unless Buyer terminates this Agreement on or before the Due Diligence Date (as hereinafter defined) under a right to terminate granted herein, the Deposit shall be earned by Seller and payable to Seller on the Due Diligence Date, as defined in Section 4.1(a).

The Title Company shall hold the Deposit and make delivery of the Deposit to the party entitled thereto under the terms hereof. Seller may instruct the Title Company to invest the Deposit in such short term, high grade securities, interest bearing bank accounts, bank certificates of deposit or bank repurchase agreements as Seller, in its discretion, deems suitable, and all interest and income thereon shall be added to and shall become a part of the Deposit.

If the sale of the Property is closed by the date fixed therefor (or any extension date provided for by the mutual written consent of the parties hereto), monies held as the Deposit shall be applied (and paid over to the Seller) on the date of Closing. If the sale of the Property is not closed by the date fixed therefor (or any such extension date) owing to failure of satisfaction of a condition precedent to Buyer’s or Seller’s obligations, except as otherwise expressly provided herein, the Deposit shall be returned and refunded to Buyer and neither party shall have any further liability hereunder. If the sale of the Property is not closed by the date fixed therefor (or any such extension date) owing to failure of performance by Seller, Buyer shall have only the right and remedy of either a) terminating this Agreement and receiving the prompt return of the Deposit and both parties will be released from further obligations under this Agreement; or b) enforcing specific performance of this Agreement. If the sale of the Property is not closed by the date fixed therefor (or any such extension date) owing to failure of performance by Buyer, Seller shall have only the right and remedy of either (A) terminating this Agreement, at which time the Deposit shall be forfeited by Buyer and the sum thereof shall go to Seller as liquidated damages (Buyer hereby releasing all claim to such sum), it being agreed that Seller’s damages in the event of such failure of performance are difficult to ascertain, that such proceeds represent the parties’ best current estimate of such damages, and that retention of the Deposit by Seller is not intended as a penalty, but as full liquidated damages; or (B) enforcing specific performance of this Agreement. Notwithstanding anything to the contrary contained herein, in the event Buyer breaches any indemnity contained in this Agreement which survives termination of this Agreement and/or Closing pursuant to the terms of this Agreement, including, without limitation, Section 6.2, the liquidated damages provisions

set forth herein shall not apply with respect thereto, and Seller shall have all rights and remedies available at law or in equity with respect to such indemnity.

If Buyer fails to timely deposit any portion of the Deposit in accordance with the terms hereof, this Agreement shall automatically terminate and Seller shall have no liability to Buyer hereunder and any portion of the Deposit theretofore deposited with the Title Company shall be forfeited by Buyer and the sum thereof shall go to Seller as partial damages (Buyer hereby releasing all claim to such sum) for a portion of the lost opportunity costs and transaction expenses incurred by Seller (without prejudice to other rights or remedies of Seller at law or in equity, including, without limitation, specific performance).

(b) Buyer shall, on the date of Closing, pay the Purchase Price, subject to credit for application of the amount of the Deposit paid to Seller as provided in subsection (a) of this Section 1.2 and subject to credit and adjustment as provided in Section 1.3 hereof, which shall be paid to Seller by the wire transfer of good, current, immediately available funds and which Buyer shall cause to be received by Seller on or before 4:00 p.m. (Central Daylight Time) on the date of Closing.

1.3 Adjustments. The following items shall be credited, debited and otherwise adjusted, and the resulting calculation shall be an adjustment to the Purchase Price payable at Closing pursuant to Section 1.2(b) hereof (where appropriate, such adjustments shall be made on the basis of a year of 12 months, 30 days to the month, Seller to have the last day, unless otherwise provided):

(a) General real property taxes (state, county, municipal, school and fire district) for the then current tax fiscal year based upon the latest available tax bills or assessment information (applying all agricultural and open space exemptions), whether for that year or the preceding year.

(b) Special taxes or assessments, if any, upon the Property assessed or becoming a lien prior to the date hereof (but only a pro rata share of the then current installment of such special taxes or assessment, if any, shall be charged as a credit against the Purchase Price, Seller agreeing to assume all liability, if any, for future installments and deferred payments).

(c) Seller shall be responsible for all electricity, water, sewer, gas, telephone and other utility charges accruing on or before the date of Closing, and Buyer shall be responsible for all liability for such utility charges accruing after the date of Closing. Seller's utility company deposits, if any, shall not be assigned and Buyer shall post its own deposits with utility companies, if required to do so by such companies. Buyer shall bear sole responsibility for opening its own new accounts with utilities as of the date of Closing, if Buyer shall so desire, and Buyer shall not have the right to utilize the accounts of Seller, which Seller intends to cause to be closed or otherwise discontinued as of the end of the date immediately following the date of Closing.

(d) Seller shall be responsible for up to \$2,500.00 of the cost of the Survey (as hereinafter defined) at Closing.

In the event, on the date of Closing, the precise figures necessary for any of the foregoing adjustments are not capable of determination, the adjustments shall be made on the basis of the good faith estimates of Buyer and Seller (using the most recent currently available information) and final adjustments shall be made promptly after precise figures are determined or available. In addition, certain costs incidental hereto and to the transactions contemplated hereby shall be borne such that at (or prior to) Closing, Seller shall pay all recording fees and costs, that portion of the cost of the Survey described in 1.3(d) above, all title commitment and title insurance premiums including the base title insurance premium as set forth below, all mortgage taxes or intangible taxes, and all transfer taxes or revenue stamps incidental to the recordation of the Special Warranty Deed, any mortgage, or otherwise. Seller shall pay the base title insurance premium of the owner's policy of title insurance obtained by Buyer at the Closing with respect to the Property (in accordance with the applicable title insurance premium rate schedule established by the Texas Department of Insurance). Buyer and Seller shall each pay one half of the escrow fees, if any, charged by the Title Company.

Except as expressly provided in this Section 1.3 or as expressly provided elsewhere in this Agreement, Buyer and Seller shall pay their own respective costs and expenses, including attorneys' fees, incidental to this Agreement and the transactions contemplated hereby.

1.4 Possession. Seller shall transfer possession of the Property to Buyer thirty (30) days following the date of Closing, subject to the Permitted Exceptions (as hereinafter defined).

1.5 Closing. The closing (herein referred to as the "**Closing**") of the transactions contemplated hereby shall be on **August 12, 2016** between the hours of 9 a.m. and 4 p.m. (Central Daylight Time) on said date. The Closing shall take place through escrow at the offices of Joplin & Joplin, Attorneys, 407 S. Tennessee, McKinney, Texas 75069.

1.6 Documents at Closing.

(a) On the date of Closing, Seller shall execute and deliver or cause to be delivered to Buyer, the following documents:

(i) Special Warranty Deed, transferring and conveying to Buyer title to the Real Property (Seller's record title to govern for purposes of the legal description, but Seller will provide an executed deed without warranty of any kind and without liability to Seller with respect to Seller's surveyed legal description upon request), subject to the lien of general real estate taxes for the then current tax fiscal year, and those easements, restrictions, conditions, and other exceptions described on Exhibit B attached hereto and incorporated herein by reference ("**Permitted Exceptions**"), which Special Warranty Deed shall be in the form attached hereto as Exhibit C.

(ii) A standard form Seller's affidavit, against mechanics liens and against parties in possession (subject to Seller's possession for thirty (30) days), and such other documents, if any, as may be required by the Title Company, on forms customarily used by the Title Company and reasonably satisfactory to Seller, in order to issue an owner's policy of title insurance.

(iii) An affidavit from Seller, in form reasonably satisfactory to Buyer, affirming that Seller is not a foreign person under the Foreign Investment in Real Property Tax Act of 1980, as amended, and that no taxes or withholding shall be assessed or applied to Buyer in connection with the Closing and the transactions contemplated hereby.

(b) On the date of Closing, Buyer and Seller shall execute and deliver to one another counterpart originals of the following:

(i) Closing Statements.

(ii) Such other documents, affidavits and agreements as the Title Company shall reasonably request.

1.7 Roll Back Taxes. If Seller's use or change in use of the Property before closing results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller. If Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This provision shall survive Closing.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller makes the following representations and warranties, which representations and warranties are true and correct on the date hereof, and which representations and warranties shall survive the Closing for a period of one year from the date thereof.

2.1 Authority. With respect to Seller, Seller represents and warrants, in particular, that:

(a) Seller is a family limited partnership duly organized, validly existing and in good standing under the laws of the State of Texas.

(b) Seller has all necessary power and authority to own, use and transfer its properties (including the Property) and to transact the business in which it is engaged, and has full power and authority to enter into this Agreement, to execute and deliver the documents required of Seller herein, and to perform its obligations hereunder.

(c) Seller is duly authorized to execute, deliver and perform this Agreement and all documents and instruments and transactions contemplated hereby or incidental hereto.

(d) The individuals executing this Agreement on behalf of Seller are authorized to do so and, upon executing this Agreement, this Agreement shall be binding and enforceable upon Seller in accordance with its terms.

2.2 Commissions. Seller has engaged Barbara Lange of The Experts REALTORS, 2202 Augusta, McKinney, TX 75070, as broker for the Seller, in connection with the sale of or the negotiation of the sale of the Property and has agreed to a six (6%) percent commission payable by Seller to Broker only upon Closing. Broker agrees to accept the commission described herein as its sole commission for this transaction.

2.3 Litigation. To Seller's actual knowledge, without duty of investigation, there are no claims, actions, suits, condemnation actions or other proceedings pending or, threatened by any entity against Seller or the Property.

2.4 No Violations of Laws. To Seller's actual knowledge, without any duty of investigation, Seller is not aware of any current violations of any applicable federal, state and local laws, ordinances, codes, regulations, rulings, orders, case law and other legal requirements ("**Laws**") affecting the Property, except as previously disclosed by Seller to Buyer in writing or disclosed in the Environmental Reports (as hereinafter defined).

2.5 No Option. To Seller's actual knowledge, Seller has not granted any options or rights of first refusal to purchase with respect to the Property.

2.6 Tenancies. There are no tenancies or occupancies affecting the Property or persons in possession of any part thereof which will not be terminated on or before Closing. There are no persons or entities with whom Seller or its agents have negotiated with regard to prospective leases of the Property that in any manner might give rise to a claim by such persons or entities against Seller or the Property.

2.7 Operating Agreements. There are no service, supply, maintenance, leasing or management agreements affecting the Property or the operation of any part thereof which will be binding upon the Property after Closing. Seller shall provide copies of current agreements to Buyer in its possession governing the Property.

2.8 Environmental. To Seller's actual knowledge, without any duty of investigation, and except as previously disclosed to Buyer, disclosed in the environmental reports to be provided to Buyer in accordance with Section 5.4 of this Agreement, if any, (collectively, the "**Environmental Reports**"), the Property has been and is in compliance in all material respects with all applicable environmental laws, and there has been no Release (as hereinafter defined) of Hazardous Materials (as hereinafter defined) at the Property.

As used herein and throughout this Agreement, references to the "knowledge" of Seller shall refer to the actual knowledge of Roger Pelton, as qualified by reference to any duty of investigation.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer makes the following representations and warranties, which representations and warranties are true and correct on the date hereof and will be true and correct on the date of

Closing, and which representations and warranties shall survive the Closing for a period of one year from the date thereof.

3.1 Corporate Authority. With respect to Buyer and its business, Buyer represents and warrants, in particular, that:

(a) Buyer is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Texas.

(b) Buyer, acting through its duly empowered and authorized City Council or City Manager, has all necessary power and authority to own and use its properties and to transact the business in which it is engaged, and has full power and authority to enter into this Agreement, to execute and deliver the documents and instruments required of Buyer herein, and to perform its obligations hereunder.

(c) Buyer is duly authorized to execute and deliver, acting through its duly empowered and authorized City Council or City Manager, and perform this Agreement and all documents and instruments and transactions contemplated hereby or incidental hereto.

(d) The individual executing this Agreement on behalf of Buyer is authorized to do so and, upon executing this Agreement, this Agreement shall be binding and enforceable against Buyer in accordance with its terms.

3.2 Commissions. Buyer is not represented by a Broker.

ARTICLE IV

CONDITIONS TO OBLIGATIONS

4.1 Conditions to the Buyer's Obligations. The obligations of Buyer to consummate the transactions provided for in this Agreement shall be subject to the satisfaction of each of the following conditions on or before the dates specified, subject to the right of Buyer to expressly waive in writing any one or more of such conditions:

(a) Seller shall have obtained a commitment (the "***Title Commitment***") in favor of Buyer for a current TLTA owner's policy of title insurance from the Title Company with respect to the Real Property, which Title Commitment shall be in the amount of the Purchase Price, shall show Seller as the owner of the Real Property, shall name Buyer as the insured, and shall include copies of all documents supporting exceptions ("***Exceptions***") set forth in the Title Commitment and copies of all documents from which any requirements set forth in the Title Commitment arise. On or before **May 31, 2016**, Seller agrees to obtain the Title Commitment (the cost of which shall be borne by the parties in accordance with Section 1.3 hereof), together with copies of all exceptions referred to thereon (and Seller agrees to furnish Buyer with copies thereof promptly upon receipt). Buyer agrees to review and approve the Title Commitment and the Exceptions shown thereon (or disapprove the same and thereby terminate this Agreement) on or before **July 15, 2016** (the "***Due Diligence Date***") (Buyer hereby agreeing that it shall not disapprove, as Exceptions, the lien of general real estate

taxes for the current tax fiscal year); provided, however, that in the event Buyer shall disapprove the status of title as shown on the Title Commitment or any Exceptions referred to thereon, Seller may, without being required to do so, on or before the date of Closing, at its own expense and effort, cure such status of title or cause to be released of record or removed (by endorsement) from the Title Commitment such disapproved Exceptions, whereupon this condition shall not be deemed unsatisfied by reason of Buyer's disapproval of such status of title or such Exceptions. Buyer shall be deemed to have approved the Title Commitment and all Exceptions listed in the Title Commitment, other than any Exceptions that Buyer expressly objects to in writing on or before the Due Diligence Date.

(b) Buyer shall have completed its inspection of all aspects of the Property on or before the Due Diligence Date, including without limitation a physical inspection, testing and engineering report and analysis with respect to the Property, reflecting the physical condition of all improvements, equipment, plumbing, electrical systems, fixtures, inventory and personal property comprising the Property, and the condition of the Real Property. Buyer may obtain such report and analysis at Buyer's expense, and to furnish Seller with a copy thereof upon any termination of this Agreement. **In the event Buyer shall disapprove any matter relating to the Property, including without limitation any title matters, discovered prior to the Due Diligence Date, Buyer may in its sole discretion, on or before the Due Diligence Date, terminate this Agreement by sending written notice of same to Seller, and the Deposit shall thereafter be returned to the Buyer within three (3) business days.** Notwithstanding anything to the contrary set forth in this Section 4.1(b), the parties agree that Section 8.4(b) shall govern and control with respect to any access, inspections, or testing to be conducted by Buyer with respect to the environmental condition of the Property. **As of the Due Diligence Date, Buyer shall have examined and inspected the Property, reviewed all instruments, records, surveys, reports, plans, studies, investigations and/or any other documents that Buyer 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.**

(c) Survey. Buyer shall provide, at Buyer's expense, at Buyer's cost, a Land Title Survey (as that term is defined in the Manual of Practice for Land Surveying in the State of Texas) of the Real Property bearing a then current certification date, which survey shall verify the location of the Real Property and shall show the location of all improvements and easements. Buyer agrees to review and approve such survey (or disapprove the same and thereby terminate this Agreement) on or before the Due Diligence Date. Seller shall reimburse Buyer up to the amount described in 1.3(d) above of the cost of the Survey at Closing.

(d) Title Insurance. The Title Company shall be unconditionally committed to issuing at Closing a title policy in the amount of the Purchase Price subject only to those Exceptions approved or deemed approved by Buyer as described in Sections 4.1(a) and 5.3.

4.2 Conditions to the Seller's Obligations. The obligations of Seller to consummate the transactions provided for in this Agreement shall be subject to the satisfaction of each of the following conditions on or before the dates specified, subject to the right of Seller to waive any one or more of such conditions:

(a) Buyer shall have, on or before the date of Closing, performed all of its covenants, obligations and agreements under this Agreement in all material respects.

(b) Seller shall have, on or before the date of Closing, fulfilled all municipal and state requirements applicable to the sale of real property in Texas, including, but not limited to, the termination of all leases on the Property.

4.3 Failure of Satisfaction of Conditions.

(a) In the event that any one or more of the matters referred to in each of the subsections of Section 4.1 has not been reviewed and approved and the condition precedent set forth in each such subsection thereby satisfied on or before the date of Closing (or, if earlier, the date for satisfaction thereof) for any reason other than owing to a failure of performance by Buyer, Buyer may, at its option, elect to terminate this Agreement and, except as otherwise expressly provided herein, the parties shall have no further liability to one another hereunder. In the event that on or prior to the date of Closing (or, if earlier, the date for satisfaction thereof) any such condition precedent is not expressly designated as satisfied or unsatisfied in writing by Buyer, then such condition precedent shall be conclusively deemed satisfied.

(b) In the event that any one or more of the matters referred to in each of the subsections of Section 4.2 has not been reviewed and approved and the condition precedent set forth in each such subsection thereby satisfied on or before the date of Closing (or, if earlier, the date for satisfaction thereof) for any reason other than owing to a failure of performance by Seller, Seller may, at its option, elect to terminate this Agreement and, except as otherwise expressly provided herein, the parties shall have no further liability to one another hereunder. In the event that on or prior to the date of Closing (or, if earlier, the date for satisfaction thereof) any such condition precedent is not expressly designated as satisfied or unsatisfied in writing by Seller, then such condition precedent shall be conclusively deemed satisfied.

ARTICLE V

COVENANTS OF SELLER

Seller covenants and agrees that from and after the date of this Agreement and until the date of Closing:

5.1 Operation of Property. Seller shall exercise reasonable efforts to maintain the buildings and improvements that comprise or that are upon the Property in substantially the same condition and repair as of the date hereof, normal wear and tear and casualty and/or condemnation damage excepted and with no substantial alterations.

5.2 Insurance of Property. Seller will cause the Property to be insured in accordance with its current insurance program.

5.3 No Liens or Encumbrances. Seller agrees that it shall not voluntarily encumber the Property with any liens or encumbrances against the Property arising subsequent to the date hereof that shall be binding upon the Property subsequent to Closing without the written approval of Buyer, which approval shall not be unreasonably withheld.

5.4 No Leases or Contracts. Seller shall not: (i) enter into any leases affecting all or any portion of the Property, (ii) enter into any service, supply or maintenance contracts pertaining to the operation of the Property that will be binding upon Buyer subsequent to Closing, or (iii) construct or install or contract for the construction or installation of any improvements; without, in each instance, obtaining the prior written consent of Buyer, which consent shall not be unreasonably withheld.

5.5 Seller's Disclosures. Seller, within five (5) business days after the date hereof, shall exercise reasonable efforts to deliver and/or otherwise make available to Buyer complete and legible copies of all surveys, investigative reports, title commitments, and architectural plans in Seller's possession or control which relate to the Property or to the condition, use, operation, occupancy and/or enjoyment thereof. Seller, within five (5) business days after the date hereof, shall provide Buyer with copies of all final environmental reports, studies and investigations in Seller's possession or control relating to any Releases or Enforcement Actions or Remedial Actions associated with the Property (collectively, the "*Environmental Disclosures*").

ARTICLE VI

COVENANTS OF BUYER

6.1 Post Termination Covenants. Buyer covenants and agrees that in the event Closing does not occur due to the failure of a condition precedent to Buyer's or Seller's obligations, then, at the option and written request of Seller, Buyer will transfer to Seller copies of all surveys, reports, and the like in the possession of Buyer and submitted to Buyer in the course of the inspections and evaluations of the Property, at Seller's cost of reproduction and delivery.

6.2 Restoration of Property. Buyer shall, in connection with its studies and investigations of the Property contemplated hereunder, promptly restore the Property to its condition existing immediately prior to such studies and investigations. Buyer hereby agrees, to the maximum extent permitted under applicable laws, rules and regulations, to indemnify, defend and hold Seller and the Property free and harmless from and against any cost, expense, charge, lien, action or judgment, as well as any claim of a right to any such cost, expense, charge, lien, action or judgment arising directly or indirectly from any act or omission of Buyer, Buyer's agents or contractors, or any services, labor, supplies or materials provided or performed by surveyors, engineers, architects and others making the inspections and tests, and from and against any personal injury and property damage caused by the act or neglect of Buyer or any of its agents, or independent contractors. This indemnification shall survive the termination of this Agreement and shall survive the Closing of the transactions described in this Agreement. Buyer,

or such person or entity actually doing any work contemplated hereunder shall secure and maintain, at Buyer's or such other person or entity's sole cost and expense, the following policies of insurance: (i) comprehensive public liability and property damage insurance, with limits of \$1,000,000 for bodily injury to, or death of, any one person, \$2,000,000 for bodily injury to, or death of, more than one person on an occurrence basis, property damage insurance with limits of \$1,000,000 for each accident, and \$1,000,000 policy limit for aggregate operations on an occurrence basis, (ii) comprehensive automobile liability insurance with limits of \$1,000,000 for injury to, or death of, any one person, \$2,000,000 for bodily injury to, or death of, more than one person, and workers' compensation and employer's liability insurance in accordance with the provisions of Texas law.

ARTICLE VII

CASUALTY; CONDEMNATION

7.1 Casualty. Subject to Buyer's right to terminate under Sections 4.1(a) and 4.1(b), in the event of the damage or destruction of all or any part of the Property, Buyer shall have no right to terminate this Agreement on account thereof, and Seller will assign to Buyer its interest in and to any insurance policies and proceeds thereof payable as a result of such damage or destruction less such portion thereof as shall first be reimbursed to Seller for the reasonable out-of-pocket costs of any restoration work incurred by Seller prior to Closing, and Buyer shall receive at Closing, as a credit against the Purchase Price, an amount equal to any uninsured loss, by reason of deductible or otherwise, relating to such damage or destruction. Seller shall not, in any event, be obligated to effect any repair, replacement, and/or restoration, but may do so at its option.

7.2 Condemnation. Subject to Buyer's right to terminate under Sections 4.1(a) and 4.1(b), in the event of the taking of all or any part of the Property prior to Closing, by eminent domain or condemnation, Buyer shall have no right to terminate this Agreement on account thereof, and Seller will assign to Buyer its interest in and to any award and proceeds thereof payable as a result of such taking.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 Binding Agreement. This Agreement shall be binding on and shall inure to the benefit of the parties named herein and to their respective heirs, administrators, executors, personal representatives, successors and assigns.

8.2 Assignment. Buyer may not assign its rights and interests hereunder without the prior written consent of Seller. Seller may not assign its rights and interests hereunder without the prior written consent of Buyer.

8.3 Notices. All notices, requests, demands and other communications hereunder shall be deemed to have been duly given if the same shall be in writing and shall be delivered personally (which shall include delivery by national overnight courier service) or sent by registered or certified mail, postage prepaid, and addressed as set forth below:

(a) If to Seller:

Roger and Arlene Pelton
1291 Gray Branch Road
McKinney, Texas 75071

With a copy to:

Barbara Lange
The Experts REALTORS
2202 Augusta
McKinney, TX 75070

With a copy to :

Joplin & Joplin
407 S. Tennessee St.
McKinney, Texas 75069

If to Buyer:

City of McKinney, Texas
222 N. Tennessee
McKinney, TX 75069
Attn: City Manager

With a copy to:

Brown & Hofmeister, LLP
740 E. Campbell, Suite 800
Richardson, TX 75081
Attn: Mark S. Houser

Any party may change the address to which notices are to be addressed by giving the other parties notice in the manner herein set forth.

8.4 Environmental Review.

(a) At Buyer's sole cost and expense, Buyer may, on or before the Due Diligence Date, inspect and survey the Property and perform tests and analyses of any kind relating to the Property's physical quality or physical condition at a time mutually

convenient to Seller and Buyer. At its option and at the same time, Seller may perform similar tests and analyses including, but not limited to, the taking of split samples with Buyer.

(b) Except as expressly provided in Section 2.8, Seller expressly disclaims any warranties as to: (i) the presence or Release of Hazardous Materials on, in, under, or adjacent to the Property, (ii) the Property's compliance with Environmental Laws, and (iii) any potential Environmental Liability associated with the Property or any activities conducted on the Property.

(c) The provisions of this Section 8.4 shall survive the termination of this Agreement for any reason and shall survive the Closing of the transactions contemplated herein.

8.5 Governing Law. This Agreement shall be construed and interpreted according to the laws of the State of Texas.

8.6 **Time of the Essence and Required Acceptance Date. Time is of the essence with respect to each and every provision of this Agreement. Notwithstanding Section 8.7 below and upon Seller's or Broker's receipt of this Agreement executed by Buyer, either by hand-delivery or electronic transmittal, Seller and Broker shall have until May 20, 2016 to accept and execute the Agreement, and deliver the executed Agreement to the Title Company, the failure of such shall result in this Agreement being null and void, and there shall be no further obligations by and between the parties.**

8.7 Performance on Business Days. If any date for the occurrence of an event or act under this Agreement falls on a Saturday or Sunday or legal holiday in the State of Texas, then the time for the occurrence of such event or act shall be extended to the next succeeding business day.

8.8 Entire Agreement. This Agreement, together with all the Exhibits attached hereto and incorporated by reference herein, constitutes the entire undertaking between the parties hereto, and supersedes any and all prior agreements, arrangements and understandings between the parties.

8.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original.

8.10 AS IS.

(a) **EXCEPT AS EXPRESSLY PROVIDED IN ARTICLE II HEREOF: (I) IT IS EXPRESSLY ACKNOWLEDGED AND AGREED BY BUYER THAT NO REPRESENTATIONS OR WARRANTIES OF ANY KIND HAVE BEEN MADE BY SELLER OR SELLER'S AGENTS OR CONSULTANTS TO BUYER OR TO THE AGENTS OR CONSULTANTS OF BUYER WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ALL INSTRUMENTS, RECORDS, SURVEYS, REPORTS, PLANS, STUDIES, INVESTIGATIONS AND/OR ANY OTHER DOCUMENTS FURNISHED TO BUYER; AND (II) ANY STATEMENTS WHATSOEVER MADE BY SELLER OR SELLER'S AGENTS OR CONSULTANTS TO**

BUYER OR TO BUYER'S AGENTS OR CONSULTANTS OUTSIDE OF ARTICLE II ARE NOT MATERIAL AND HAVE NOT BEEN RELIED UPON BY BUYER. WITHOUT LIMITING THE GENERALITY OF THIS ACKNOWLEDGMENT AND AGREEMENT, IT IS SPECIFICALLY ACKNOWLEDGED AND AGREED THAT THE PROPERTY SHALL BE ACCEPTED BY BUYER IN "AS IS", "WHERE IS" CONDITION, "WITH ALL FAULTS" AND ALL LATENT AND PATENT DEFECTS.

(b) EXCEPT AS EXPRESSLY PROVIDED IN ARTICLE II HEREOF: (I) SELLER DOES NOT MAKE ANY REPRESENTATIONS AND/OR COVENANTS REGARDING THE CONDITION OF THE PERSONAL PROPERTY AT THIS TIME, AT THE TIME POSSESSION IS TRANSFERRED TO BUYER, OR OTHERWISE, AND SELLER SHALL NOT BE REQUIRED TO MAINTAIN NOR INSURE THE PERSONAL PROPERTY EITHER BEFORE OR AFTER CLOSING; AND (II) BUYER EXPRESSLY ASSUMES ALL RISK OF LOSS OF THE PERSONAL PROPERTY AT ALL TIMES BEFORE AND AFTER THE CLOSING, AND BUYER SHALL HAVE NO RECOURSE OTHER THAN THAT PROVIDED IN THIS AGREEMENT AGAINST SELLER FOR ANY SUCH LOSS; AND (III) SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND WARRANTY FOR FITNESS FOR A PARTICULAR USE OR ANY OTHER WARRANTY EXPRESSED OR IMPLIED THAT MAY ARISE BY OPERATION OF LAW OR UNDER THE UNIFORM COMMERCIAL CODE OF THE STATE OF TEXAS.

8.11 Confidentiality. Subject to the provisions and exceptions of the Texas Public Information Act, Buyer and Seller agree that all of the terms, conditions and other provisions of this Agreement and all surveys, reports and the like, including, without limitation, environmental reports ("*Confidential Information*"), submitted to Buyer in the course of the inspections and evaluations of the Property shall be held in strict confidence, except as required to be disclosed by law, rule, regulation, court order, or any governmental, judicial or regulatory process and except for disclosures to agents, advisors, officers, employees, attorneys and the like on a need-to-know basis, provided such agents, advisors, officers, employees, attorneys and the like shall be advised of the confidential nature of the Confidential Information in accordance with this Agreement. This Section 8.11 shall survive the termination of this Agreement and shall survive the Closing of the transactions contemplated herein.

8.12 No Offer. The submission of this Agreement to Buyer shall not be deemed an offer by Seller to enter into any transaction or to enter into any other relationship with Buyer, whether on the terms contained in this Agreement or on any other terms. This Agreement shall not be binding upon Buyer or Seller nor shall Buyer or Seller have any obligations or liabilities or any rights with respect hereto, unless and until both Buyer and Seller have executed and delivered this Agreement. Until such execution and delivery of this Agreement, Seller may negotiate with other prospective buyers and either Buyer or Seller may terminate all negotiation and discussion of the subject matter of this Agreement without cause or for any reason, without recourse or liability.

8.13 Statutory Notice Provisions.

(a) Notice Regarding Water Districts. Buyer hereby acknowledges that the commitment referenced in Section 4.1(a) hereof may show that the Property is located within certain districts established pursuant to Title 4 of the Texas Water Code, Article III of the Texas Constitution, or Section 59, Article XVI of the Texas Constitution. If the

Property is located within any said district, Seller may be obligated to disclose and notify Buyer of the Property's location within any said district pursuant to, among other statutory provisions, V.T.C.A., Water Code § 49.452 and V.T.C.A., Water Code § 54.812 (collectively, the "**Statutory Notice Requirements**"). Following receipt by Seller of a copy of such commitment, the Buyer and Seller shall, upon Seller's request, promptly amend this Agreement (in form and substance reasonably satisfactory to the parties) to provide appropriate disclosure and notification to the Buyer pursuant to the Statutory Notice Requirements.

(b) Notice Regarding Possible Liability for Additional Taxes. Seller notifies Buyer under Section 5.010, Texas Property Code, as follows:

If for the current ad valorem tax year the taxable value of the land that is the subject of this contract is determined by a special appraisal method that allows for appraisal of the land at less than its market value, the person to whom the land is transferred may not be allowed to qualify the land for that special appraisal in a subsequent tax year and the land may then be appraised at its full market value. In addition, the transfer of the land or a subsequent change in the use of the land may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the land. The taxable value of the land and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the county in which the land is located.

8.14 Independent Consideration. At the same time as the deposit of the Deposit is made to Title Company pursuant to Section 1.2 hereof, Buyer shall deliver to Seller in cash by wire transfer of good and immediately available funds or by cashiers or certified check the sum of One Hundred and No/100 Dollars (\$100.00) (the "**Independent Contract Consideration**") which amount has been bargained for and agreed to as consideration for Buyer's right to purchase the Property provided herein, and for Seller's execution and delivery of this Agreement. The Independent Contract Consideration is in addition to and independent of all other consideration provided in this Agreement, and is nonrefundable in all events. Seller and Buyer agree that the payment of the Independent Contract Consideration and the deposit of the Deposit are sufficient consideration to support the Agreement notwithstanding Buyer's right under Section 4.1 to terminate the Agreement.

8.15 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of the other provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

“BUYER”

CITY OF MCKINNEY, TEXAS, a Texas
municipal corporation

By: _____

Name: Tom Muehlenbeck

Title: Interim City Manager

Date signed and delivered: May __, 2016

“SELLER”

ROGER PELTON, an individual
ARLENE PELTON, an individual
PELTON FAMILY LIMITED PARTNERSHIP, a
Texas family limited partnership

By: _____

Name: Roger Pelton

Date signed: May __, 2016

Received:

Title Company:

By: _____

Date: _____

“BROKER”

The Expert REALTORS

By: _____
Name: Barbara Lange

Date signed: _____

EXHIBIT A
REAL PROPERTY

EXHIBIT B

PERMITTED EXCEPTIONS

1. Any covenants, conditions, limitations, restrictions, rights of way, encumbrances, encroachments, reservations, easements, agreements and other matters reserved in or established by the provisions of, or permitted under or contemplated by this Purchase and Sale Agreement.
2. Covenants, conditions, limitations, restrictions, rights, rights of way, encumbrances, encroachments, reservations, easements, agreements and other matters of fact or record.
3. Present and future zoning, subdivision, building, land use, and environmental laws, ordinances, restrictions, resolutions, orders and regulations and all present and future ordinances, laws, regulations and orders of all federal, state, county, municipal or other governments, agencies, boards, bureaus, commissions, authorities and bodies now or hereafter having or acquiring jurisdiction of the Property and the use and improvement thereof.
4. Any state of facts or exception which an accurate survey or an inspection of the Property would show.
5. Special assessments now or hereafter becoming a lien.
6. General property taxes for the current tax fiscal year and subsequent tax fiscal years.
7. All exceptions listed in the Title Commitment to be obtained by Buyer pursuant to Section 4.1(a) of the Agreement.

The parties hereto acknowledge and agree that this Exhibit B shall not limit Buyer's right to review and approve (or disapprove) the status of title to the Property as contemplated in Section 4.1(a) of this Agreement.

EXHIBIT C

SPECIAL WARRANTY DEED

[Subject to Review by Title Company]

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

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF COLLIN §

("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) cash, and other good and valuable consideration paid to Grantor by _____, a _____ corporation, whose address is _____, Attention: _____ ("Grantee"), the receipt and sufficiency of which are hereby fully acknowledged and confessed, has GRANTED, SOLD and CONVEYED, and by these presents does hereby GRANT, SELL and CONVEY, unto Grantee, certain real property in Collin County, Texas, being more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes, (the "Land"), TOGETHER WITH, all and singular, Grantor's right, title and interest, if any, in and to the following but without any kind of warranties or representations (expressed, implied, or statutory) and without recourse: (i) the rights, benefits, privileges, easements, hereditaments, appurtenances, buildings, other improvements and interests located thereon or in anywise appertaining thereto, (ii) strips or gores, if any, between the Land and abutting or immediately adjacent properties, and (iii) any land lying in or under the bed of any street, alley, road or right-of-way, opened or proposed, abutting or immediately adjacent to the Land (collectively, the "Property").

This conveyance is made and accepted subject to the matters shown in Exhibit "B" attached hereto and made a part hereof for all purposes ("Permitted Exceptions").

Current ad valorem taxes on the Property have been prorated as of the date hereof between Grantor and Grantee.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, its successors and assigns forever, subject to the Permitted Exceptions; and Grantor does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular the Property unto the said

Grantee, and Grantee's successors and assigns, against every person whomsoever claiming or to claim the same or any part thereof, except as to the Permitted Exceptions.

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

EXECUTED as of the date provided below.

GRANTOR:

By: _____

Name: _____

Title: _____

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on ____ day of _____, 20__, by _____, the _____ of _____.

Notary Public, State of Texas

PREPARED IN THE OFFICE
AFTER RECORDING, RETURN TO:

Brown & Hofmeister, LLP
740 E. Campbell Road, Suite 800
Richardson, TX 75081
Attention: Mark Houser

EXHIBIT "A" TO SPECIAL WARRANTY DEED

Property Description

EXHIBIT “B” TO SPECIAL WARRANTY DEED

Permitted Exceptions

1. Any covenants, conditions, limitations, restrictions, rights of way, encumbrances, encroachments, reservations, easements, agreements and other matters reserved in or established by the provisions of, or permitted under or contemplated by this Purchase and Sale Agreement.
2. Covenants, conditions, limitations, restrictions, rights, rights of way, encumbrances, encroachments, reservations, easements, agreements and other matters of fact or record.
3. Present and future zoning, subdivision, building, land use, and environmental laws, ordinances, restrictions, resolutions, orders and regulations and all present and future ordinances, laws, regulations and orders of all federal, state, county, municipal or other governments, agencies, boards, bureaus, commissions, authorities and bodies now or hereafter having or acquiring jurisdiction of the Property and the use and improvement thereof.
4. Any state of facts or exception which an accurate survey or an inspection of the Property would show.
5. Special assessments now or hereafter becoming a lien.
6. General property taxes for the current tax fiscal year and subsequent tax fiscal years.
7. All exceptions listed in the Title Commitment to be obtained by Buyer pursuant to Section 4.1(a) of the Agreement.