

REAL ESTATE CONTRACT

THIS REAL ESTATE CONTRACT (the "Contract") is hereby made and entered into this 8th day of August, 2019__ (the "Effective Date"), by and between the City of Olathe, Kansas, a municipal corporation duly organized under the laws of the State of Kansas, or its assignee or designee (the "City" or "Seller"), and Board of County Commissioners of Johnson County, Kansas (the "Buyer" or "Johnson County"). This Real Estate Contract is subject to approval by the Governing Bodies of both the City and the County (effective only after this Contract is signed by the Board Chairman of the County and the Mayor of the City).

WHEREAS, Seller desires to sell and Buyer desires to purchase, upon the terms and conditions hereinafter set forth, the following real estate inclusive of a parcel of land north of Ernie Miller Park and West of K-7 Highway, Johnson County Parcel ID No. DF231322-4006 and legally described in **Exhibit A**, together with all rights, easements and appurtenances pertaining thereto and all improvements, trees, bushes, landscaping and foliage thereon (the "Property"). The parties acknowledge that the described property contains no structures or other buildings or vertical improvements.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. Purchase Price. Seller shall sell the Property to Buyer and Buyer shall purchase the Property from Seller for the sum of One Hundred Thirty Two Thousand

Dollars Five Hundred Eighty Two Dollars and (\$132,582.00) (the "Purchase Price"), by delivery of immediately available and collectible funds at Closing, less the Deposit, but including Closing costs (both as hereinafter defined) and subject to adjustments as provided herein.

2. Fund Disputes. In the event a dispute arises with respect to the distribution of any funds held pursuant to this Contract, the Title Company may apply to a court of competent jurisdiction for an order determining the party or parties to whom such funds shall be paid. All costs of such proceedings, including reasonable attorney's fees and costs incurred by the Title Company, and the successful party or parties in connection therewith, shall be paid by the unsuccessful party or parties to such proceedings.

3. Closing. Closing hereunder (the "Closing") shall be held on or before sixty (60) days from the Effective Date of this Contract as long as all contingencies set forth herein have been satisfied or waived. Closing shall be held at the offices of the Title Company, or at such other location which may be agreed upon by the parties. "Closing Costs" are defined as all appraisal costs, inspection costs, title service costs, settlement statements, title insurance, governmental recording and transfer charges. All Closing Costs shall be paid by Buyer and shall not be included in the Purchase Price.

4. Environmental Inspection. Within ten (10) days of the Effective Date, Seller shall provide Buyer all existing environmental reports on the Property, if any, completed within the twelve (12) months preceding the Effective Date of this Contract (the "Environmental Reports"). Buyer shall have thirty (30) days after receipt of the Environmental Reports to review the reports, obtain updated Environmental Reports if it wishes, and submit written notification to Seller of any unacceptable environmental

conditions. In the event Buyer determines, in its sole and absolute discretion, that the Property contains an unacceptable environmental condition, this Contract shall, at Buyer's option, be null and void, in which event the Deposit shall be immediately returned by the Title Company to Buyer and neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Contract.

5. Survey. Seller shall, within ten (10) days after the Effective Date, cause to be furnished to Buyer, at Seller's sole cost and expense, all existing surveys of the Property, if any. Buyer will be responsible, at its sole cost and expense, for obtaining any additional survey that may be required by the Title Company for an extended ALTA/ACSM title insurance policy (the "Survey").

6. Inspection Period. Buyer, its agents and representatives, shall have thirty (30) days after receipt of any Environmental Reports and survey provided by Seller, as hereinafter defined (the "Inspection Period") to enter upon the Property to inspect the same and to perform such tests as needed to determine surface, subsurface and structural conditions of the Property, including but not limited to conducting Phase I and Phase II environmental inspections and core drillings. In the event Buyer notifies Seller of any unacceptable condition of the Property this Contract shall, at Buyer's option, be null and void, in which event the Deposit shall be immediately refunded by the Title Company to Buyer and neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Contract. The parties hereby acknowledge that the Title Company shall be authorized to release the Deposit to Buyer upon receipt of the above-described notice related to unacceptable conditions of the Property.

7. Representations and Warranties. Seller represents, warrants and

covenants to Buyer that:

- a. Seller has the legal capacity and authority to execute and deliver this Contract and all instruments to consummate the Closing of the sale of the Property.
- b. Seller has no knowledge that any person other than Seller has any right, title or interest in and to the Property.
- c. To Seller's knowledge, there are no causes of action, suits or judgments against Seller or the Property which would delay or prohibit the sale.
- d. There are no contracts, agreements or obligations of Seller for and with respect to the Property which has not been disclosed to Buyer in writing, and which are or may become a lien against the Property or an obligation of Buyer upon Closing.
- e. To Seller's knowledge, Seller has received no written notices of any pending or threatened condemnation or disconnection of any existing utilities.
- f. Except as set forth in the Environmental Reports provided by Seller, if any, to Seller's knowledge, there has occurred no release, generation, discharge, manufacture, treatment, transportation or disposal on or in connection with the Property of any hazardous, dangerous or toxic materials, substances or wastes (all, collectively, "Hazardous Materials"), as any of such terms are defined by the Comprehensive Environmental Response, Compensation, and Liability Act (known as "CERCLA") or the Resource Conservation and Recovery Act (known as "RCRA") or any other applicable federal, state or local law, regulation, ordinance or requirement.

relating to or imposing standards of conduct concerning any hazardous, toxic or dangerous materials, substances or wastes (all, collectively "Environmental Laws") in violation of any Environmental Laws.

8. Conditions Precedent. It is specifically agreed that Buyer's obligations hereunder are conditioned upon the satisfaction that Seller's warranties and representations shall remain true and correct in all material respects on and as of the Closing Date. Should any warranty or representation not be in effect or complied with on or before Closing, Buyer shall have the option of (i) waiving compliance with any one or more of said warranties or representations and closing this transaction, (ii) extending the Closing Date for a reasonable period of time, not to exceed thirty (30) days, in order to provide Seller time to satisfy such warranties or representations, or (iii) terminating this Contract, in which latter event the Deposit shall be immediately refunded by the Title Company to Buyer and neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Contract, other than obligations which are herein expressly provided to survive the termination of this Contract.

9. Conveyance of Title. Seller shall convey good and marketable fee simple title to the Property to Buyer pursuant to a recordable statutory form special warranty deed. "Good and marketable title" as used herein shall mean ownership which, when acquired by Buyer, will be insurable by the Title Company under its standard ALTA extended coverage title insurance policy at standard rates, including such endorsements as Buyer may request, and is free and clear of all liens, encumbrances, and other exceptions to title except the Permitted Title Exceptions as hereinafter defined. The parties hereby specifically agree that the above-described title insurance policy shall be

issued with all "standard exceptions" being deleted therefrom. The "standard exceptions" to be deleted shall include the mechanic's lien exception, the unsettled taxes exception, and all "standard" survey exceptions. Seller shall deliver to Buyer at Closing an affidavit acceptable to Buyer and the Title Company stating that Seller has sole and exclusive possession of the Property and stating, among other things which may be reasonably required by Buyer and Title Company, that either (i) there have been no improvements, additions, alterations, repairs or any changes of any kind whatsoever made to the Property during the last sixty (60) days immediately preceding Closing, or (ii) if there have been any such improvements or repairs, that all lienors, in connection with such improvements or repairs have been paid in full, together with such other documentation reasonably required by Buyer, including without limitations, a Foreign Investment in Real Property Tax Act (known as FIRPTA) income tax withholding certificate, and evidence of authority to consummate the sale, in form and substance acceptable to Buyer.

10. Title Commitment. After the Effective Date, Buyer may obtain a commitment for an owner's title insurance policy underwritten by the Title Company, together with legible copies of all documents recorded against the Property ("Title Information"). The costs of said title insurance shall be paid by Buyer. Seller agrees that Buyer shall have until thirty (30) days after the Effective Date to examine the Title Information to the Property and notify Seller of any objectionable matter or defect which affects the marketability or insurability of the title to the Property or which adversely affects the use of the Property. In the event Seller is notified of any such objectionable matters, Seller agrees to promptly employ its best efforts to procure a cure for same. In the event, however, Seller is unable through the exercise of its best efforts to cure any objectionable

matter prior to Closing, then at Buyer's option, Buyer may either (i) take title to the Property despite the existence of such cure, or (ii) terminate this Contract in which event the Deposit paid by Buyer shall be immediately refunded by the Title Company to Buyer, and neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Contract, which shall then become null and void and of no further force and effect. Any title exceptions to the Property to which Buyer does not object, or any title exception as to which Buyer waives its objection, are referred to herein as "Permitted Exceptions" or "Permitted Title Exceptions."

11. Destruction of the Property. Except as otherwise provided herein, Seller shall bear the risk of all loss or damage to the Property and any personal property located on the Property from any causes whatsoever during the time Seller is in possession of the Property. Seller represents that it has and will maintain until "Closing" and so long thereafter as it occupies the Property, a policy of fire and extended coverage insurance in at least the full amount of the replacement cost of all buildings and improvements located on the Property, if any exist as of the Effective Date (the "Property Insurance"). In the event, at any time between the making of this Contract and Closing, all or any portion of the property is damaged or destroyed by whatever cause, then Buyer may elect either to: (i) terminate this Contract, in which event the Deposit paid by Buyer shall be immediately refunded by the Title Company to Buyer, and neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Contract; or (ii) proceed to Closing with no reduction in the Purchase Price, in which event Seller shall deliver to Buyer at Closing a duly executed assignment of Seller's interest in all insurance proceeds payable as a result of any such fire or other casualty.

12. Maintenance of the Property. Prior to Closing and during possession of the Property, the Property shall be maintained by Seller in a reasonable, professional and prudent manner and in its current condition at all times.

13. Notices. All notices, requests, demands or other communications hereunder shall be in writing and deemed given when delivered personally or on the day said communication is deposited in the U.S. mail, by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Seller: City of Olathe
PO Box 768
Olathe, KS 66051-0768
ATTN: City Clerk

With a Copy to: Ronald R. Shaver
Olathe City Attorney
PO Box 768
Olathe, KS 66051-0768

If to Buyer: Board of County Commissioners of Johnson
County, Kansas
111 S. Cherry Street, Suite 3300
Olathe, KS 66061

With a Copy to: Robert A. Ford, Asst. Co. Counselor
111 S. Cherry, Suite 3200
Olathe, Kansas 66061

If to Title Company: Security 1st Title
124 E. Park Street
Olathe, KS 66061

or to such other address as the parties may from time to time designate by notice in writing to the other parties.

14. Amendments. Neither this Contract nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party against which enforcement of the

change, amendment, modification, waiver or discharge is sought.

15. Default. In the event the purchase and sale is not consummated because of the inability, failure or refusal, for whatever reason whatsoever, by Seller to convey the Property in accordance with the terms and conditions provided herein, or because of other fault of Seller or reason provided herein for Buyer not consummating this transaction, the Deposit paid in connection with this Contract shall be returned by the Title Company to Buyer, without prejudice to any other legal or equitable right or remedy of Buyer against Seller including, but not limited to, specific performance. In the event the purchase and sale is not consummated because of the default of Buyer, then the Title Company shall deliver the Deposit paid hereunder to Seller, without prejudice to any other legal or equitable right or remedy of Seller against Buyer including, but not limited to, breach of contract. Seller and Buyer hereby agree that it would be impossible to ascertain the damages accruing to Seller as a result of a default by Buyer under this Contract. The payment of said liquidated damages, therefore, shall constitute Seller's sole and exclusive remedy against Buyer and shall be in lieu of the exercise by Seller of any other legal or equitable right or remedy which Seller may have against Buyer as a result of Buyer's default, but in no event shall the amount of liquidated damages exceed the amount of Property Insurance maintained by Seller as otherwise described herein.

16. Applicable Law. This Contract shall be governed by and construed and enforced in accordance with the laws of the State of Kansas.

17. Legal Fees. In the event legal action is instituted by any of the parties to enforce the terms of this Contract or arising out of the execution of this Contract, each party will be responsible for its own attorney's fees.

18. Waiver. Failure of either Buyer or Seller to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Buyer's or Seller's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Contract.

19. Agents or Brokers. Each party represents to the other that no broker, finder or intermediary is involved in the purchase and sale of the Property. Each party hereby indemnifies and agrees to hold the other party harmless from and against any and all costs arising or resulting, directly or indirectly, out of any claim by any broker or finder in connection with this transaction due to their respective acts.

20. Counterparts. This Contract may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Contract.

21. Captions. All captions, headings, section and subsection numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Contract.

22. Severability. The invalidity or enforceability of a particular provision of this Contract shall not affect the other provisions hereof, and this Contract shall be construed in all respects as if such invalid or unenforceable provision were omitted.

23. Entire Agreement. **TIME IS OF THE ESSENCE OF THIS CONTRACT.** This Contract constitutes the sole and entire contract of the parties and is binding upon Seller and Buyer, their heirs, successors, legal representatives and assigns.

24. Voluntary Negotiation. Each party hereby acknowledges that it has the

power and authority to enter into this Contract. By signing this Contract, each party affirms that this Contract was negotiated voluntarily and in good faith.

IN WITNESS WHEREOF, this Contract has been executed by the parties hereto as of the date first above written.

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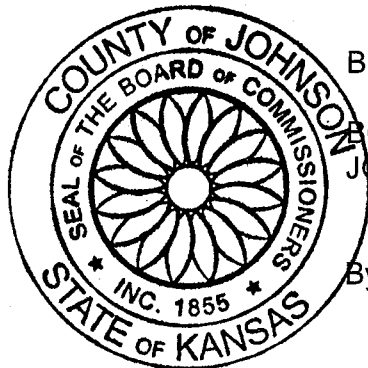
SELLER:

CITY OF OLATHE, KANSAS
A Municipal Corporation

By: Michael E. Copeland, Mayor

ATTEST:

Emily K. Vincent, City Clerk



BUYER:

BOARD OF COUNTY COMMISSIONERS OF
JOHNSON COUNTY, KANSAS

By:

Ed Eilert, Chairman

ATTEST:

Lynda Sader
Lynda Sader, Deputy County Clerk

(SEAL)

Approved 7-0

FILED

AUG 08 2019

DEPUTY COUNTY CLERK
JOHNSON COUNTY KANSAS

EXHIBIT A

A tract of land over part of the Southeast Quarter of Section 22, Township 13 South, Range 23 East of the 6th P.M., in the City of Olathe, Johnson County, Kansas, being more particularly described as follows:

BEGINNING at the Southwest corner of said Southeast Quarter, said point also being the Southwest corner of a tract of land described in a deed, recorded in Book 3884, Page 483; thence North $02^{\circ}11'26''$ West, along the West line of said Southeast Quarter, and along the West line of said tract of land, a distance of 511.40 feet; thence North $87^{\circ}50'52''$ East, departing said West lines, a distance of 709.64 feet, to a point on the East line of said tract of land; thence South $38^{\circ}07'08''$ East, along said East line, a distance of 346.90 feet; thence South $51^{\circ}52'52''$ West, continuing along said East line, a distance of 392.70 feet, to the a point on the South line of said Southeast Quarter, said point also being the Southeast corner of said tract of land; thence South $87^{\circ}50'52''$ West, departing said East line, along said South line, and along the South line of said tract of land, a distance of 595.20 feet, to the POINT OF BEGINNING, containing 401,763 square feet or 9.22 acres, more or less.