

## **REAL ESTATE CONTRACT**

THIS REAL ESTATE CONTRACT (the "Contract") is hereby made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date"), by and between BARBARA A. NEWBANKS and DONALD W. NEWBANKS, as trustees of the BARBARA A. NEWBANKS REVOCABLE TRUST (the "Seller"), and the CITY OF OLATHE, KANSAS, a municipal corporation duly organized under the laws of the State of Kansas, or its assignee or designee (the "Buyer" or "City"). This Real Estate Contract is subject to approval by the Governing Body of the City for acquisition of the property located at 600 S. Grant Street (effective only after this Contract is signed by the Mayor of said City).

WHEREAS, Sellers desire to sell and Buyer desires to purchase, upon the terms and conditions hereinafter set forth, the following described real estate located at 600 S. Grant Street, Olathe, Kansas, (Johnson County Parcel ID No. DP51000000 0001B) and legally described as follows:

The North 70 feet of the South 140 feet of the West 125 feet of Lot 1,  
OFFENBACHER AND HAWORTHS ADDITION, City of Olathe, Johnson  
County, Kansas.

together with all rights, easements and appurtenances pertaining thereto and all improvements, trees, bushes, landscaping and foliage thereon (the "Property").

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. Sellers shall sell the Property to Buyer and Buyer shall purchase the Property from Sellers for the sum of Two Hundred Twenty-Two Thousand Five Hundred Dollars (\$222,500.00) (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. Deposit. Within twenty (20) business days from the Effective Date of this agreement, Buyer shall deposit in escrow with Security 1st Title Company, a Kansas corporation duly authorized to provide real estate title services in the State of Kansas with its principal place of business at 124 E. Park St. Olathe KS 66061 (the "Title Company")) an earnest money deposit of One Thousand Dollars (\$1,000.00) (the "Deposit"). In the event Title Company receives written notice of default, non-performance, or other demand for all or a portion of the Deposit from one of the parties (the "Demanding Party"), Title Company will immediately give written notice to the other party (the "Non-Demanding Party") of such claim or demand as hereinafter provided. In the event the Non-Demanding Party fails to dispute or object to such claim or demand within five (5) business days from the date of Title Company's written notice, Title Company is hereby authorized and directed to deliver the Deposit to the Demanding Party. In the event the Non-Demanding Party disputes or objects to the aforesaid claim or demand within the said five (5) business day period, Title Company is not to deliver the Deposit hereunder without receipt of a joint direction the parties, their successors or

assigns, in writing, or as directed by a court of competent jurisdiction.

3. 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.

4. Taxes. All real property ad valorem taxes shall be prorated (based upon 365-day year) between Buyer and Sellers as of the date of Closing (as hereinafter defined) based upon the most recently available property tax information provided by the Johnson County Appraiser's Office. If such tax information is not available for the year in question, taxes shall be re-prorated when the amount thereof can be ascertained and the provisions hereof shall survive the Closing and the delivery of Sellers' general warranty deed. All special assessments levied against the Property shall be paid in full by Sellers on or before closing even if said assessments are due in installments subsequent to Closing.

5. 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. "Relocation Costs" are defined as costs attributable to packing and unpacking personal property, moving vehicle rental, disconnecting and reconnecting household appliances, temporary storage of personal property, insurance while property is in storage or transit, and/or transfer of utility services and utility reconnections. All Relocation Costs shall be paid by Buyer as part of (not in addition to) the Purchase Price.

6. Possession. Sellers may retain possession of the described Property until April 1<sup>st</sup>, 2020, however, during such time that Sellers retain possession Sellers shall:

- a. Maintain the house in good condition;
- b. Maintain hazard and fire insurance and any other necessary insurance, including liability insurance, at the fair market value of the house; and
- c. Name City as additional insured on said insurance policy.

The parties further understand and agree that prior to the Possession Date, Sellers may retain possession of the Property in "as is" condition and Buyer is not responsible for any cost to improve the Property whatsoever, nor for any other hidden condition or defect of the house that may be discovered by the Sellers, nor any cost to cure such condition or defect whatsoever. When Sellers vacate the Property the Sellers shall deliver the keys and garage openers to the Property to the City of Olathe Legal Department, Second Floor of City Hall at 100 East Santa Fe Street, Olathe, Kansas. Sellers shall be responsible and liable for all personal property remaining on the Property and for any loss or damage to said personal property after the date of closing until removal of the personal property from the Property. Sellers shall be responsible for and pay all utilities and pro-rated taxes until the property is vacated and the keys are

delivered to Buyer.

7. Environmental Inspection. Within ten (10) days of the Effective Date, Sellers 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 Sellers 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 Sellers shall have any further liabilities, obligations or rights with regard to this Contract.

8. Survey. Sellers shall, within ten (10) days after the Effective Date, cause to be furnished to Buyer, at Sellers' 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").

9. Inspection Period. Buyer, its agents and representatives, shall have thirty (30) days after receipt of any Environmental Reports and survey provided by Sellers, 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 Sellers

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 Sellers 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.

10. Representations and Warranties. Sellers represent, warrant and covenant to Buyer that:

- a. Sellers have 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. Sellers have no knowledge that any person other than Sellers has any right, title or interest in and to the Property.
- c. To Sellers' knowledge, there are no causes of action, suits or judgments against Sellers or the Property which would delay or prohibit the sale.
- d. There are no contracts, agreements or obligations of Sellers 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 Sellers' knowledge, Sellers have 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 Sellers, if

any, to Sellers' 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.

11. Conditions Precedent. It is specifically agreed that Buyer's obligations hereunder are conditioned upon the satisfaction that Sellers' 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.

12. Conveyance of Title. Sellers shall convey good and marketable fee simple title to the Property to Buyer pursuant to a recordable statutory form 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. Sellers shall deliver to Buyer at Closing an affidavit acceptable to Buyer and the Title Company stating that Sellers have 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.

13. 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. Sellers agree that Buyer shall have until thirty (30) days after the Effective Date to examine the Title Information to the Property and notify Sellers 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 Sellers are notified of any such objectionable matters, Sellers agree to promptly employ their best efforts to procure a cure for same. In the event, however, Sellers are unable through the exercise of their 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 Sellers 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."

14. Destruction of the Property. Except as otherwise provided herein, Sellers 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 Sellers are in possession of the Property. Sellers represent that they have and will maintain until "Closing" and so long thereafter as they occupy 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 (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 Sellers 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 Sellers shall deliver to Buyer at Closing a duly executed assignment of Sellers' interest in all insurance proceeds payable as a result of any such fire or other casualty.

15. Maintenance of the Property. Prior to Closing and during possession of the Property, the Property shall be maintained by Sellers in a reasonable, professional and prudent manner and in its current condition at all times. Buyer is buying the house in its "as is" condition.

16. 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 Sellers:	Donald and Barbara Newbanks 13507 S. Locust Street Olathe, KS 66062
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If to Buyer:	City of Olathe PO Box 768 Olathe, KS 66051-0768
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ATTN: City Clerk

With a Copy to:

Ronald R. Shaver  
Olathe City Attorney  
PO Box 768  
Olathe, KS 66051-0768

If to Title Company:

Security 1<sup>st</sup> Title  
124 E. Park Street  
Olathe, KS 66061  
ATTN: Kathy Andrew

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

17. 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.

18. Default. In the event the purchase and sale is not consummated because of the inability, failure or refusal, for whatever reason whatsoever, by Sellers to convey the Property in accordance with the terms and conditions provided herein, or because of other fault of Sellers 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 Sellers 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 Sellers as their sole and exclusive remedy, and as full, complete and final liquidated damages. Sellers and Buyer hereby agree that it would be impossible to ascertain the damages accruing to Sellers

as a result of a default by Buyer under this Contract. The payment of said liquidated damages, therefore, shall constitute Sellers' sole and exclusive remedy against Buyer and shall be in lieu of the exercise by Sellers of any other legal or equitable right or remedy which Sellers 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 Sellers as otherwise described herein.

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

20. 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, the prevailing party will be entitled to receive from the other party or party's reasonable attorney's fees to be determined by the court in which the action is brought.

21. Waiver. Failure of either Buyer or Sellers 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 Sellers' right to exercise such right or to demand strict compliance with any term, condition or covenant under this Contract.

22. Agents or Brokers. Each party represents and warrants to the other that no real estate broker or agent has been instrumental in the procurement of this Contract. Additionally, Buyer and Sellers represent and warrant that no real estate commission or compensation shall be payable by such party with respect to the procurement and execution of this Contract or the sale of the Property contemplated hereby. Each party shall indemnify and save the other party wholly harmless against

any loss, cost, or other expense, including reasonable attorney's fees that may be incurred by such other party by reason of any breach of the foregoing warranties.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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, in accordance with K.S.A. 26-518 (c), that this Contract was negotiated voluntarily and in good faith, and that because this Contract will result in displacement of the Sellers, Sellers agree that the Relocation Costs included in the 25% Incentive and assistance provided by Buyer to Sellers are fair and reasonable.

28. Threat of Condemnation. Notwithstanding the foregoing Section 27, or any other provisions of this Contract to the contrary, each party acknowledges that Buyer has the power to condemn the Property under the authority of K.S.A. 12-635,

K.S.A. 26-201, et seq., and K.S.A. 26-501, et seq., that the taking of Sellers' property for public use is necessary for the purpose of constructing channel improvements and replacing existing culverts with larger existing culverts pursuant to public improvements project 2-C-017-19 by Buyer to Little Cedar Creek, that Buyer may threaten to condemn the Property in order to construct such public improvements, and that but for this Contract, Buyer could have exercised its condemnation powers to acquire the Property.

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

SELLERS:

\_\_\_\_\_  
\_\_\_\_\_

BUYER:

CITY OF OLATHE, KANSAS  
A Municipal Corporation

By: \_\_\_\_\_  
Michael E. Copeland, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)