

## **PURCHASE AND SALE AGREEMENT**

This **Purchase and Sales Agreement** ("Agreement") to buy and sell real property is entered between Seller and Purchaser as identified below and is effective on the date ("Effective Date") of the last of the signatures by Seller and Purchaser as parties to this Agreement and acknowledgement by Title Company of receipt of the Agreement.

**Seller:** Mildred Ottaway by and through her attorney in fact,  
Corinne Louise Bouas  
714 N. Federal Drive  
Allen, Texas 75013

Telephone: (\_\_\_\_) \_\_\_\_\_

Facsimile: (\_\_\_\_) \_\_\_\_\_

E-mail: \_\_\_\_\_

**Seller's Attorney:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_

Facsimile: (\_\_\_\_) \_\_\_\_\_

E-mail: \_\_\_\_\_

**Seller's Broker:** Nick Hayden  
Jones Lang Lasalle Americas, Inc.  
8343 Douglas Avenue, Suite 100  
Dallas, Texas 75225

Telephone: (214) 438-6488

Facsimile: (312) 938-1357

E-Mail: [nick.a.hayden@am.jll.com](mailto:nick.a.hayden@am.jll.com)

**Purchaser:** City of Allen, a Texas home rule municipality  
305 Century Parkway  
Allen, Texas 75013  
Attn: Peter H. Vargas, City Manager

Telephone: (214) 509-4110

Facsimile: (214) 509-4118

E-mail: [pvgargas@cityofallen.org](mailto:pvgargas@cityofallen.org)

**Purchaser's Broker:** None

**Purchaser's  
Attorney**

Kevin B. Laughlin  
Peter G. Smith  
Nichols, Jackson, Dillard, Hagar & Smith, LLP  
500 N. Akard, Suite 1800  
Dallas, Texas 75201

Telephone: (214) 965-9900  
Facsimile: (214) 965-0010  
E-mail: [klaughlin@njdhs.com](mailto:klaughlin@njdhs.com)  
[psmith@njdhs.com](mailto:psmith@njdhs.com)

**Title Company:**

Chicago Title Company  
700 Central Expressway South, Suite 100  
Allen, Texas 75013  
Attn: Jeri Phillips, Escrow Officer

Telephone: (214) 644-1930  
Facsimile: (214) 644-1940  
E-mail: [jeri@chicagotitletx.com](mailto:jeri@chicagotitletx.com)

**Property:**

A 2.4064± acre tract of land out of the James L. Read Survey, Abstract N. 758, City of Allen, Collin County, Texas, the boundaries of which are generally depicted on Exhibit "A", being the remainder of that certain 3.157± acre tract of land conveyed to Charles E. Ottaway and wife, Mildred Ottaway by Warranty Deed dated May 8, 1959, recorded in Volume 553, Page 7, Deed Records, Collin County, Texas, the boundaries of which tract, along with the final determination of area, shall be determined by the Survey; together with all right, title and interest of Seller, if any, in and to any (i) strips and gores between said tract and abutting properties, (ii) land lying in or under the bed of adjacent streets, alleys, roads or rights of way, (iii) easements or rights of way appurtenant to or otherwise benefitting said tract, (iv) all permits and approvals relating to said tract, (v) all development rights relating to said tract, (vi) all reversionary rights related to said tract, and (vii) all other rights and appurtenances of any kind owned by Seller and related to said tract.

**Inspection Period:**

The period commencing on the Effective Date and ending no later than 30 days after the Effective Date.

**Closing Date:**

On or before the later of (i) thirty (30) days after the end of the Inspection Period or (ii) fifteen (15) days after satisfaction of the condition precedent to Closing described in Section 12, or other date mutually agreed to by the parties in writing.

**Purchase Price:**

**Five Hundred Ten Thousand and No/100 Dollars (\$510,000.00) Cash**

**Earnest Money:**       **\$5,000.00**, to be delivered to the Title Company not later than the third (3rd) business day after the Effective Date, which amount shall be applied to the Purchase Price at and contingent upon Closing, and which amount shall become non-refundable upon the expiration of the Inspection Period, except as otherwise expressly provided in this Agreement. If Purchaser fails to timely deposit the Earnest Money, Seller may, at Seller's option, terminate this Agreement by delivering a written termination notice to Purchaser before Purchaser deposits the Earnest Money, whereupon neither party shall have any further rights or obligations hereunder except as to those rights or obligations which are stated to expressly survive the termination of this Agreement.

**Option Fee:**       **\$500.00**, being the non-refundable portion of the Earnest Money (which amount shall be non-refundable, except as otherwise expressly provided in this Agreement), but which shall be applied to the Purchase Price at and contingent upon Closing.

**NOW, THEREFORE**, in consideration of the Purchase Price and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1.     **Sale and Purchase; Reservations; Restrictions.** Seller agrees to sell, and Purchaser agrees to purchase the Property as provided in this Agreement, including any and all improvements located thereon.

2.     **Title and Survey.**

(a)     Not later than the fifteen (15) days after the Effective Date, Purchaser will, at Seller's expense, cause the Title Company to issue, with respect to the Property, the following:

(i)     a current commitment for an Owner's Policy of Title Insurance for the Property from the Title Company, setting forth the state of title to the Property together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Property, together with all exceptions or conditions to such title;

(ii)    best available copies of all documents referenced in the Title Commitment;  
and

(iii)   tax certificate(s) regarding the payment of ad valorem taxes for current and prior years.

(b) Not later than fifteen (15) calendar days after the Effective Date, Purchaser may, at Purchaser's expense and option, obtain a survey (the "Survey") of the Property prepared by a duly licensed Texas Registered Public Land Surveyor. The Survey shall be staked on the ground, and the plat shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, and rights-of-way on or adjacent to the Property, if any, and shall contain the surveyor's certification that there are no encroachments on the Property other than what are listed on the Title Commitment and shall set forth a metes and bounds description of the Property. If different than the platted description of the Property because of save and except portions of the platted lot, then, the legal description contained in said Survey shall be used by the parties as the legal description contained in the Special Warranty Deed. Otherwise, if there are no save and exception portions of the platted lot, then the platted lot legal description will be used in the Special Warranty Deed.

(c) Purchaser shall, not later than five (5) days after Purchaser's receipt of the last of the Survey (or after the expiration of the period for obtaining the Survey, whether or not a Survey is obtained, whichever is earlier), and the Title Commitment notify Seller and Title Company in writing of any objections to the Survey or Title Commitment related to the Property. If there are any timely written objections made by Purchaser in accordance with this Section 2(c), Seller may, but shall be under no obligation to, attempt to satisfy same prior to Closing. Seller shall not be required to incur any cost to cure any of Purchaser's objections. If Seller delivers written notice to Purchaser not later than the fifth (5<sup>th</sup>) business day after Seller's receipt of Purchaser's objections that Seller is unwilling or unable to satisfy such objections, Purchaser may, as its sole and exclusive remedy, either (i) waive such objections and accept such title as Seller is able to convey prior to the expiration of the Inspection Period, or (ii) terminate this Agreement by written notice to Seller and the Title Company prior to the expiration of the Inspection Period, whereupon the Earnest Money (save and except the Option Fee) shall be refunded to Purchaser and neither party shall have any further rights or obligations hereunder except as to those rights or obligations which are stated to expressly survive the termination of this Agreement. Any exceptions to title to which Purchaser does not timely object in accordance with this Section 2(c) or to which Purchaser objects but are subsequently waived by Purchaser shall be deemed to be Permitted Exceptions.

### 3. **Inspection Period.**

(a) During the Inspection Period, Purchaser and its agents, employees, or contractors shall have the right to enter upon the Property during regular business hours upon reasonable notice to Seller and conduct such inspections, tests and studies as Purchaser may deem necessary; provided, any intrusive testing shall require the prior written consent of Seller, not to be unreasonably withheld. If for any reason Purchaser determines not to purchase the Property, Purchaser may terminate this Agreement by notifying Seller and Title Company in writing prior to the expiration of the Inspection Period. In such event, the Earnest Money shall be returned to Purchaser and neither party shall have any further claim against the other under this Agreement, except for obligations of Purchaser which survive termination of this Agreement. If Purchaser does not timely terminate this Agreement under this Section 3, it shall have no further right to do so under this Section 4; and Purchaser shall have waived its right to terminate this Agreement within the Inspection Period.

(b) Purchaser may enter the Property to conduct its inspection, but shall be solely responsible for any damages caused thereby, and any claims arising therefrom. Purchaser shall restore any such damages within ten (10) days after any entry on to the Property by Purchaser or any of its employees, agents, contractors or consultants. Purchaser shall be responsible for and shall pay all costs, liabilities, damages and expenses arising in connection with any entry on to or inspections of the Property by Purchaser or any of its employees, agents, contractors or consultants. Purchaser's obligations under this paragraph shall survive any termination of this Agreement.

(c) The provisions of this Section 3 shall expressly survive any termination of this Agreement or the Closing.

4. **Closing.** The closing of the sale of the Property in accordance with the terms of this Agreement (the "Closing") shall occur on or before the Closing Date at the Title Company or by mail or overnight delivery service, or at such other time as may be agreeable to the parties.

5. **Closing Deliverables.**

(a) At the Closing, Seller shall deliver to the Title Company:

(i) a special warranty deed, in form and substance reasonably acceptable to Purchaser, conveying good and indefeasible title to the Property to Purchaser, free and clear of any and all encumbrances except the Permitted Exceptions (as defined in Section 8 hereof);

(ii) such other documents as may be reasonably required by Title Company in order to cause Title Company to issue a Texas owner's policy of title insurance (or equivalent) in the amount of the Purchase Price, insuring such title to the Purchaser; and

(iii) possession of the Property, free of parties in possession except as set out in Schedule B of the Title Commitment, as depicted in the Survey, and as provided by law in the lien in favor of taxing authorities for real property taxes not yet due and payable.

(b) At the Closing, Purchaser shall deliver to Seller through the Title Company:

(i) the Purchase Price; and

(ii) such other documents as may be reasonably required by the Title Company.

6. **Taxes.** Seller shall pay at or before Closing all ad valorem taxes, plus any penalties, interest, court costs, and attorneys' fees, if any, due on delinquent amounts not paid, for tax years prior to the year in which Closing occurs, except as hereinafter provided. In addition, Seller will pay at Closing the pro-rated amount of ad valorem taxes for the Property for the calendar year of Closing in accordance with Texas Tax Code §26.11. PURCHASER IS A POLITICAL SUBDIVISION OF THE STATE OF TEXAS AND EXEMPT FROM PAYMENT OF AD VALOREM TAXES ON PROPERTY OWNED BY IT FROM AND AFTER THE DATE OF ITS CONVEYANCE TO PURCHASER. If the Property has been the subject of special valuation and

reduced tax assessments pursuant to the provisions of Chapter 23, Subchapter D, of the Texas Tax Code or under any other provision of law with respect to any period before the Closing, and if additional taxes, penalties, or interest are assessed pursuant to Texas Tax Code §23.55 or under the other provision of law, the Purchaser will be responsible for the payment of these additional taxes

7. **Closing Costs.**

(a) Seller hereby agrees to pay and be responsible for the following closing costs:

(i) All costs related to obtaining any release of mortgage and liens on the Property, including the costs of preparation and recording of any related releases of liens; and

(ii) One-half of all fees and premiums for the Basic Owners Title Policy, including fees for obtaining the survey endorsement, (but not fees associated with any costs for any other amendments and endorsements to the Owners Title Policy that might be requested by Purchaser);

(iii) One-half of Title Company's escrow fees;

(iv) One-half of the costs for any tax certificates issued;

(v) Seller's attorneys' fees, if any;

(vi) One-half of the recording fee for the special warranty deed; and

(vii) Such other incidental costs and fees customarily paid by sellers of property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

(b) Purchaser hereby agrees to pay and be responsible for the following closing costs:

(i) One-half of all fees and/or premiums for the Basic Owners Title Policy including fees for obtaining the survey endorsement, and all of the fees and premiums for any other amendments and endorsements to the Basic Owner's Title Policy which Purchaser requests;

(ii) All costs and fees for the Survey;

(iii) One-half of Title Company's escrow fees;

(iv) One-half of the recording fees for the special warranty deed;

(v) Purchaser's attorneys' fees; and

(vi) Such other incidental costs and fees customarily paid by purchasers of property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

8. **Permitted Exceptions.** The (i) lien for current taxes not yet due and payable, (ii) any matters shown on the Title Commitment which are promulgated by law to appear in any title insurance commitment or policy, (iii) any exceptions to title to which Purchaser does not timely object in accordance with Section 2(c) above or to which Purchaser objects but are subsequently waived by Purchaser, (iv) zoning ordinances, (v) existing oil and gas leases and reservations of the mineral estate, (vi) items shown on the Survey and (vii) any deed of trust lien or other lien against the Property created at Closing, shall not be valid objections to title and shall be deemed to be "Permitted Exceptions". Subject to the foregoing, as a condition of Closing, Seller must resolve, at Seller's sole cost, the items that are listed on Schedule C of the Title Commitment which are by their nature Seller's responsibility, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this Agreement, and use due diligence to cure the title and survey objections that Seller has agreed in writing to cure pursuant to Section 2(c) above, if any.

9. **Representations and Covenants.** (a) Seller represents and covenants that: (i) it has authority to enter into this Agreement, and that this Agreement represents the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms; (ii) to Seller's actual knowledge, without duty of inquiry, no other person has any interests in or claims against the Property (other than as reflected by the Title Commitment or the Survey); (iii) except as may be set forth in the documents delivered by Seller to Purchaser pursuant to Section 2(a), Seller has no actual knowledge, without duty of inquiry, of any uncured violation of applicable laws, rules, regulations, codes or ordinances with respect to the Property, nor of any existence, release or disposal of any toxic or hazardous substance or waste upon or affecting the Property, nor of any pending or threatened litigation affecting the Property; and (iv) it will not hereafter encumber the Property.

(b) Purchaser represents that it has authority to enter into this Agreement and that this Agreement represents the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.

(c) The representations set forth in this Section 9 shall survive Closing.

10. **Seller's Property Sold As Is.**

(a) Purchaser represents that as of the Closing Date that it:

(i) will have fully inspected, or been provided the opportunity to inspect, the Property; and

(ii) will have made all investigations as it deems necessary or appropriate and will be relying solely upon its inspection and investigation of the Property for all purposes whatsoever, including, but not limited to, the determination of the condition of the

structures, improvements, soils, subsurface, drainage, surface and groundwater quality, and all other physical characteristics; availability and adequacy of utilities; compliance with governmental laws and regulations; access; encroachments; acreage and other survey matters and the character and suitability of the Property.

(b) Except as provided in Section 12, below, Purchaser acknowledges and agrees that the Property is being purchased and will be conveyed "AS IS" with all faults and defects, whether patent or latent, as of the Closing.

(c) Except with respect to the warranty of the title to the Property being conveyed by Seller pursuant to this Agreement, such warranty to be included in the Special Warranty Deed, Purchaser acknowledges and agrees that Seller has made no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Property, its condition, or any other matters whatsoever, made to or furnished to Purchaser by Seller or any employee or agent of Seller, except as specifically set forth in this Agreement.

11. **Remedies.** Except with respect to any indemnities and obligations set forth in Paragraph 3, and Seller's right to reasonable attorney's fees and all costs of court in enforcing any part of this Agreement, if Purchaser defaults, Seller's sole remedy shall be to terminate this Agreement and retain the Earnest Money. If Seller defaults, Purchaser's sole and exclusive remedy shall be to terminate this Agreement and obtain a refund of the Earnest Money and the Option Fee. No termination shall occur pursuant to a default until the non-defaulting party has provided written notice of default not less than ten (10) days prior to the proposed date of termination and the defaulting party has failed to cure the default.

12. **Special Conditions.** As a condition precedent to Closing, Seller agrees, at Seller's sole cost, to remove all on-site equipment and contents of each structure and to cause the demolition, removal, and disposal of the existing single family residence, driveway, barns, storage shed and other outbuildings and improvements (collectively, "the Improvements") from the Property. Upon completion of the demolition, all material and debris shall be removed and properly disposed, existing utilities capped below grade, the slab removed, and footers demolished to a point not less than one (1) foot below grade. If Seller has failed to complete the demolition and removal of the Improvements on or before the 180<sup>th</sup> day after the Effective Date, Purchaser may, at its sole option (i) grant Seller additional time to complete the demolition and removal of the Improvements, or (ii) terminate this Agreement and receive a refund of the Earnest Money. Seller understands and acknowledges that Purchaser's cost for demolishing and removing the Improvements may be greater than Seller's cost because of the statutory requirements with which Purchaser must comply in order to enter a contract for demolition of the Improvements, which process would include a requirement to seek competitive bids for such work.

13. **Notices.** Notices must be in writing and may be hand delivered and/or mailed by certified mail with return receipt requested, or sent by facsimile transmission with confirmed receipt, to the addresses stated above. Notice given by delivery service shall be effective upon receipt at the address of the addressee; notice given by mail shall be effective upon depositing the notice in a receptacle of the United States Postal Service, postage prepaid and properly addressed, and notice sent by facsimile transmission shall be effective upon electronic confirmation of receipt. In



addition, copies of notices shall be provided to the party's attorney at the addresses indicated above.

14. **Miscellaneous.**

(a) **Entireties.** This Agreement contains the entire agreement of the parties pertaining to the purchase and sale of the Property. The parties agree there are no oral agreements, understandings, representations or warranties made by the parties that are not expressly set forth in this Agreement. Any prior written agreements, understandings, representations or warranties between the parties will be deemed merged into and superseded by this Agreement, unless it is clear from the written document that the intent of the parties is for the previous written agreement, understanding, representation or warranty to survive the execution of this Agreement.

(b) **Modifications.** This Agreement may only be modified by a written document signed by both parties.

(c) **Assignment.** Neither party may assign its rights under this Agreement without the prior written consent of the other party.

(d) **Time is of the Essence.** Time is of the essence with respect to the performance by the parties of their respective obligations hereunder.

(e) **Effective Date.** The Effective Date of this Agreement shall be the date on which the following conditions have been satisfied:

(i) authorized representatives of the parties have signed this Agreement; and

(ii) a fully signed copy of this Agreement has been delivered to the Title Company.

(f) **Non-Business Day.** If the final date of any period provided herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday, or holiday, then the end of such period shall be extended to the next business day.

(g) **Brokers.** Purchaser and Seller acknowledge and agree that Seller's Broker may be entitled to a brokerage fee or commission payable from Seller's funds upon Closing and funding of the sale of the Property to Purchaser pursuant to a separate agreement between Seller and Seller's Broker. Seller hereby agrees to indemnify, defend, and hold Purchaser harmless against claims by Seller's Broker for damages, court costs, and reasonable attorneys' fee related to any claims made by Seller's Broker for breach of contract, or other equitable claims for payment of any fees related to the sale of the Property or this Agreement. Both parties represent and warrant they have worked with no other broker relative to this transaction and that no brokerage commission is due and payable upon the Closing except as agreed in this Paragraph (e). To the extent allowed by law, each party agrees to indemnify, defend, and hold the other party harmless from and against any costs, expenses or liability for any compensation, commission, fee, or charges

that may be claimed by any agent, finder or other similar party, other than the named Seller's Broker, by reason of any dealings or acts of the indemnifying party.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes and constitute one and the same instrument; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(i) Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

(j) Law Governing. This Agreement shall be construed under and in accordance with the laws of the State of Texas; and venue for any action arising from this Agreement shall be in the State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court. This provision shall survive the termination or expiration of this Agreement.

(k) Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the Closing shall survive.

(l) Exhibits. All exhibits attached to this Agreement are incorporated by reference and constitute a part of this Agreement as if fully set forth herein.

*(signatures on following page)*

**SIGNED AND AGREED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**PURCHASER:**

**City of Allen, Texas**

By: \_\_\_\_\_  
Peter H. Vargas, City Manager

ATTEST:

\_\_\_\_\_  
Shelly George, City Secretary

**SIGNED AND AGREED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**SELLER:**

By: \_\_\_\_\_  
Corinne Louise Bouas, Attorney-in-Fact for  
Mildred Ruth Ottaway

**RECEIPT OF CONTRACT**

Title Company acknowledges receipt of a copy of this Agreement executed by both Purchaser and Seller on the \_\_\_\_ day of \_\_\_\_\_, 2017.

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

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

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

**EXHIBIT "A"**  
**Depiction of Approximate Property Boundaries**



<http://map.collincad.org/>

2/20/2017