

## REAL ESTATE CONTRACT FOR EXCHANGE OF PROPERTY

This contract to exchange real property is between the City of Mansfield, Texas (“City”) and JBK Realty LLC (“JBK”) as identified below and is effective on the date (“Effective Date”) of the last of the signatures by both City and JBK as parties to this contract and by Title Company (“Contract”).

City: CITY OF MANSFIELD  
1200 E. Broad Street, Mansfield, Texas 76063  
(817) \_\_\_ - \_\_\_  
E-mail: [matt.jones@mansfieldtexas.gov](mailto:matt.jones@mansfieldtexas.gov)  
Type of Entity: Home Rule Municipality and political subdivision of the State of Texas

City’s Attorney: Taylor, Olson, Adkins, Sralla & Elam, LLP  
6000 Western Place, Ste. 200, Fort Worth, Texas 76017  
Phone: (817) 332-2580  
Fax: (817) 332-4740

JBK: JBK REALTY LLC  
JBK  
702 E. Broad St.  
Mansfield, Texas 76063  
(817) \_\_\_ - \_\_\_  
E-mail: [ballen2056@aol.com](mailto:ballen2056@aol.com)  
Type of Entity: Texas Limited Liability Company

JBK ’s Attorney: Harris Cook LLP  
Attn: David L. Cook  
309 E. Broad Street  
Mansfield, TX 76063  
email: [david@harriscooklaw.com](mailto:david@harriscooklaw.com) with a copy to  
[Tammy@harriscooklaw.com](mailto:Tammy@harriscooklaw.com)

*City’s Exchange Property:* a portion of 700 E Broad Street, Mansfield, Texas 76063, and more specifically depicted in Exhibit A-1, attached hereto and incorporated herein for all purposes (“City Exchange Property”). The conveyance of the City Exchange Property will include all of the improvements located thereon and all fixtures attached thereto, if any, and all rights and interests of City appurtenant to the City Exchange Property, including all streets, alleys, rights- of-way, and easements, strips and gores, and rights of ingress and egress.

*JBK’s Exchange Property:* a portion of 702 E Broad Street, Mansfield, Texas 76063, and more specifically depicted in Exhibit A-2, attached hereto and incorporated herein for all purposes

("JBK Exchange Property"). The conveyance of the JBK Exchange Property will include all of the improvements located thereon and all fixtures attached thereto, if any, and all rights and interests of JBK appurtenant to the JBK Exchange Property, including all streets, alleys, rights-of-way, and easements, strips and gores, and rights of ingress and egress.

The City Exchange Property and JBK Exchange Property shall be referred to collectively as "Exchange Properties".

Title Company and Escrow Agent: Yellowstone Title  
Attn: Robyn S. Accipiter  
309 E. Broad Street  
Mansfield, TX 76063  
e-mail: Robyn@yellowstonetitle.us

County for Performance: Tarrant County, Texas

**A. Deadlines and Other Dates.** All deadlines in this Contract expire at 5:00 P.M. Central Standard Time on the day indicated. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence. The Parties may agree by amendment to extend any or all deadlines if necessary.

1. Delivery of Title Commitment for Exchange Properties: 20 days after the Effective Date of this Contract. (or if later than the 20 days, the objections are due 7 days from the receipt of commitment).

2. Delivery of Survey for Exchange Properties: 20 days after the Effective Date of this Contract.

3. Delivery of legible copies of instruments referenced in the Title Commitments and Surveys for Exchange Properties: 20 days after the Effective Date of this Contract.

4. Delivery of Title Objections to the other Party for Respective Exchange Property: 10 days after the delivery of the last of the Title Commitment, Survey, and legible copies of the instruments referenced in them.

5. Delivery of Records specified in Paragraph D.3 ("Review Materials") to the other Party for Respective Exchange Property: 10 days after the Effective Date.

6. End of Inspection Period: 45 days after the Effective Date of this Contract.

7. Closing Date: on or before 60 days after the Effective Date of this Contract.

**B. Exhibits.** The following are attached to and are a part of this Contract:

- Exhibit A-1 — Description of the City Exchange Property
- Exhibit A-2 — Description of the JBK Exchange Property
- Exhibit B-1 — Form of Deed for Conveyance of City's Exchange Property
- Exhibit B-2 — Form of Deed for Conveyance of JBK's Exchange Property

**C. Exchange of Property.** City agrees to convey the City Exchange Property to JBK in exchange and in consideration for JBK's conveyance to City of the JBK Exchange Property and the other consideration described herein. JBK agrees to convey the JBK Exchange Property to City in exchange and in consideration for City's conveyance to JBK of the City Exchange Property and the other consideration described herein. The promises by City and JBK stated in this Agreement are the consideration for the formation of this Agreement. The Forms of Deed in Exhibit B-1 and B-2 will be used to convey the Exchange Properties. City and JBK agree that this Agreement shall not be binding upon or enforceable against City until the City Council has approved this Agreement in a properly noticed open meeting of the City Council.

**D. Title and Survey**

1. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the subject Exchange Property. The effective date stated in each Title Commitment must be after the Effective Date of this Agreement. "Title Policy" means an Owner Policy of Title Insurance issued by the Title Company, insuring fee title to the applicable Exchange Property, subject only to (i) the standard printed exceptions; and (ii) other exceptions, if any, which the Party acquiring such Exchange Property approves or is deemed to have approved (collectively, the "Permitted Exceptions").

2. *Survey.* "Survey" means a survey in the form required by the Title Company to insure fee title to the City Exchange Property or the JBK Exchange Property. Each Party, at such Party's expense, shall have the right to obtain a new survey on the property such Party is receiving.

a. *For City Exchange Property.* The Title Commitment for the City Exchange Property and legible copies of documents referenced therein will be furnished by the Title Company to JBK by the deadline stated in section A.1 ("City Exchange Property Title Policy"). The City Exchange Property Title Policy will be issued by the Title Company referenced herein on the standard form promulgated by the State Board of Insurance of Texas insuring JBK's fee simple title to the City Exchange Property to be good and indefeasible, subject to the terms of such policy and the exceptions set forth therein in a face amount equal to the fair market value allocable to the City Exchange Property, and containing no exceptions other than Permitted Exceptions.

b. *For JBK Exchange Property.* The Title Commitment for the JBK Exchange Property and legible copies of documents referenced therein will be furnished by the Title Company to City by the deadline stated in section A.1 ("JBK Exchange Property Title Policy"). The JBK Exchange Property Title Policy will be issued by the Title Company referenced herein on the standard form promulgated by the State Board of Insurance of Texas insuring the City's fee simple title to the JBK Exchange Property to be good and indefeasible, subject to the terms of such policy and the exceptions set forth therein in a face amount equal to the fair market value allocable

to the JBK Exchange Property, and containing no exceptions other than the Permitted Exceptions.

3. *Review Materials.* Not later than the deadline stated in A.5, each Party will provide to the other Party copies of or access (during regular business hours) to any leases, licenses, surveys, governmental notices, engineering reports and studies material to the Properties, which are in such Party's possession (collectively, the "Review Materials"). Earnest money contracts, appraisals, unrecorded closing documents, closing statements, privileged communications under the attorney/client privilege, confidential business or trade information, and any partnership agreements or other documents which are not material are excluded from the disclosure requirement as Review Materials hereunder. All Review Materials will be delivered or provided to the other Party "AS IS" and without any representation or warranty.

4. *Title Objections.* City and JBK shall have until the Title Objection Deadline stated in section A.4 to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify the other of objections to any of them ("Title Objection"). Each Party will be deemed to have approved all matters reflected by the Survey and Title Commitment if such Party has not made a Title Objection by the Title Objection Deadline. The matters that each Party either approves or is deemed to have approved will be included in the definition of Permitted Exceptions. If either Party notifies the other Party of any Title Objection, the notified Party has five (5) days from receipt of notice to notify the objecting Party whether the notified Party will attempt to cure the Title Objection[s] before closing ("Cure Notice"). If the notified Party does not timely give its Cure Notice, the objecting Party may, within five (5) days after the deadline for the giving of the Cure Notice, notify the other Party that this Agreement is terminated or the objecting Party will proceed to close, subject to the notified Party's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under the notified Party after the Effective Date, and cure only the Title Objection[s] that the notified Party has agreed to cure in the Cure Notice. If the objecting Party fails to timely give notice of its election to terminate, then the objecting Party will be deemed to waive its objection to the particular Title Objection and such item will be deemed a Permitted Exception. If a Party notifies the other party that it will attempt to cure a particular Title Objection, then the cure of such Title Objection will automatically become a condition precedent to the objecting Party's obligation to close the transaction contemplated by this Agreement. If a new exception is added to a Title Commitment after the Title Objection Deadline, then the Party who initially approved such Title Commitment will have five (5) business days from receipt of notice of such new exception to object to such new item. If the applicable Party does not timely object to such new item then such new item will be deemed a Permitted Exception. If the applicable Party timely objects to such new item, then the process described above will be followed (i.e. the non-objecting Party will have the right to deliver a Cure Notice and the objecting Party will have the right to terminate this Agreement if the non-objecting Party elects not to attempt to cure the particular item, all within the time periods provided above). At or before closing, each Party must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under that Party after the Effective Date of this Agreement, and cure the Title Objections that the Party has agreed to cure.

**E. Inspection Period.** Each Party shall have a period of forty-five (45) days following the Effective Date of this Agreement, ("Inspection Period") in order to inspect the property it will be

acquiring and conduct such tests and studies it deems necessary, if any, subject to the terms of this Agreement. Each party, at such party's expense, shall have the right to obtain a Phase I Environmental Study on the property such party is receiving.

1. *Entry onto the Property.* Each Party's right of access will be subject to the following:

a. The inspecting Party will not damage or impair the other Party's Exchange Property in any way as a result of its activities thereon;

b. The inspecting Party will not unreasonably interfere in any material manner with existing operations or occupants of the Exchange Property being inspected, if any;

c. The inspecting Party will notify the other in advance of its plans to conduct tests so that the owner of the Exchange Property may be present during the tests;

d. The inspecting Party must repair any damage caused to the Exchange Property as a result of the inspecting Party's activities and restore the Exchange Property to its pre-inspection condition, as close as reasonably practicable, promptly after the alteration or damage occurs;

e. The inspecting Party will deliver to the other Party copies of all inspection reports that it prepares or receives from third-party consultants or contractors; and

f. The inspecting Party will abide by any other reasonable entry rules imposed by the other Party with regard to the inspecting Party's entry.

2. *Environmental Assessment.* Each Party has the right to conduct environmental assessments of the Exchange Property. Each Party will provide, or will designate a person with knowledge of the use and condition of their respective Exchange Property to provide information requested by the other Party or Party's agent or representative regarding the use and condition of the Exchange Property during the period of ownership. Each Party will cooperate in obtaining and providing to the other party or its agent or representative information regarding the use and condition of the Exchange Property before period of ownership to the extent that the information is within that party's possession or control.

3. *Right to Terminate.* Either Party may terminate this Contract for any reason by notifying the other Party before the end of the Inspection Period.

**F. Representations.** As their respective sole and exclusive warranties and representations, each Party represents to the other, and covenants that:

1. *Representations.*

a. *Authority.* It has the authority to convey its Property to the other Party. All documents required by this Agreement to be executed and delivered to the other Party at Closing will be, duly authorized, executed, and delivered.

b. *Clear Title.* It has good and indefeasible title in fee simple to their respective Exchange Properties, free and clear of all liens (except those liens that will be released at or before closing), and no party, except as herein set forth, has or shall have on the Closing Date any rights in, or to acquire, either of the Exchange Properties, there being no other contracts outstanding for acquisition or lease of the Exchange Properties.

c. *No Adverse Actions Pending.* There are no actions, suits, claims, assessments, or proceedings pending or, to its knowledge, threatened that could materially adversely affect the ownership, operation, or maintenance of such Party's Exchange Property or its ability to perform hereunder.

d. *Claims; Hearings.* Each Party will notify the other promptly of any written notice claim or administrative hearing that is threatened, filed, or initiated before Closing that affects their respective Properties.

e. *Outstanding Bills.* All bills and other payments due with respect to the ownership, operation, and maintenance of its Property that could have an adverse impact on such Party's Exchange Property post-Closing have been paid or will be paid (i) in the ordinary course of business and (ii) prior to the Closing Date.

f. *Cooperation.* The Parties will cooperate with each other (a) before and after Closing, to transfer the applications, permits, and licenses held by the other and used in the operation of their respective Properties and to obtain any consents necessary for the other to operate the Property after closing and (b) before Closing, with any reasonable evaluation, inspection, audit, or study of their respective Properties prepared by, for, or at the request of the other.

g. *Performance of Covenants and Agreements.* The other Party must have performed all covenants and agreements required to be performed at or before Closing by that party.

h. *No Bankruptcy.* No voluntary or involuntary proceeding in bankruptcy shall be pending with respect to that Party.

Should any of the foregoing representations be found to be incorrect as of the Closing Date with respect to either Party; the other Party, as its sole and exclusive remedy, may either waive the incorrect representation and proceed to Closing or terminate the Agreement.

2. *Covenants Regarding Notice.* Each Party covenants and agrees with the other Party that from and after the Effective Date of this Agreement until the Closing Date or the termination of this Agreement:

a. The Party will notify the other Party promptly upon receipt of any notice that any proceedings for the condemnation of such Party's Exchange Property, or any portion thereof, have been instituted.

b. The Party will advise the other Party promptly of any litigation, arbitration or administrative hearing concerning or affecting its Property of which such Party has actual knowledge or notice.

c. The Party will not encumber the subject Property, or grant any interest in, or allow or grant any encumbrance including restrictive covenants, upon title to its Property.

**G. Default, Termination and Remedies.** If either Party, breaches, defaults or fails to perform any of its obligations (“Default”) under this Agreement then the other Party shall provide the breaching Party with written notice which shall a) state, with particularity, the alleged Default and the action required to cure such Default; and b) contain a statement of intent to terminate this Agreement if the Default is not cured. Upon receipt of such notice of intent, the defaulting Party shall have ten (10) days after receipt of such notice in which to cure the alleged Default and to thereby prevent termination of this Agreement. The non-defaulting Party, at its sole option, may extend the time period to cure the alleged Default referenced above. Should such Default not be cured by the defaulting Party, the non-defaulting Party shall be entitled to terminate this Agreement by giving the defaulting Party written Notice of such termination. In such event, the non-defaulting Party shall be entitled to pursue any actions or remedies it may have at law or in equity to address the breach, default or non-performance, and to recover all costs, including reasonable attorneys’ fees as are equitable and just which were associated the default, breach or non-performance.

If this Agreement is terminated, each Party will promptly return to the other all documents relating to their respective Properties that were delivered to the other and all copies that the Party has made of the documents. After return of the documents and copies, neither Party will have further duties or obligations to the other under this Agreement, except for those obligations that cannot be or were not performed before termination of this Agreement.

If either Party defaults under any provision of this Agreement or fails to deliver documents to be delivered at or after Closing, the Parties acknowledge that monetary damages may be insufficient or impossible to accurately calculate and in such event that injunctive relief in lieu of or in addition to monetary damages should be available to the non-defaulting Party in any judicial proceeding.

## **H. CONDITION OF THE PROPERTY UNTIL CLOSING; COOPERATION;**

1. *Maintenance and Operation.* Until closing, the Parties will each (a) maintain their respective Properties as they existed on the Effective Date, except for reasonable wear and tear and casualty damage and damage caused by the other Party; (b) operate their Property in the same manner as it was operated on the Effective Date; (c) comply with all contracts and governmental regulations affecting their Property; and (d) the City will demolish or cause the demolition of all structures on the Exchange Properties at its sole expense. Until the end of the Inspection Period, neither Party will enter into, amend, or terminate any contract that affects their Property other than in the ordinary course of operating their Property and will promptly give notice to the other of each new, amended, or terminated contract, including a copy of the contract, in sufficient time so that the acquiring Party may consider the information before the end of the Inspection Period. If such notice is given within three (3) days before the end of the Inspection Period, then the Inspection Period will be extended for three (3) days with respect to the new item only. After the end of the

Inspection Period, either Party may terminate this Agreement if the other enters into, amends, or terminates any contract that affects the Property without first obtaining the other's written consent.

2. *Casualty Damage.* Each Party will notify the other promptly after discovery of any casualty damage to their respective Properties. Neither Party will have an obligation to repair or replace their respective Property if it is damaged by casualty before the Closing Date. Either Party may terminate this Agreement if the casualty damage that occurs before Closing would materially affect its intended use of the Property, by giving notice to the other Party within five (5) days after receipt of notice of the casualty (or before closing if the notice of the casualty is received less than five (5) days before the Closing Date). If the Party does not terminate this Agreement, the other will convey the Property to that Party in its damaged condition and all insurance proceeds payable with respect to such casualty will be assigned to the acquiring Party.

3. *Condemnation.* Each Party will notify the other promptly after it receives notice that any part of their respective Properties has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Either Party may terminate this Agreement if the condemnation would materially affect its intended use of the Property by giving notice to the other Party within five (5) days after receipt of notice of the casualty (or before the Closing Date if the notice of the casualty is received less than five (5) days before the Closing Date). If the Party does not terminate this Agreement following such notice, (a) each Party have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to the Party acquiring the subject Exchange Property, and (c) if the taking occurs before Closing, the description of the Property will be revised to delete the portion taken.

## **I. Closing**

1. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

a. *Closing Documents.* The parties will execute and deliver the Closing Documents to the Title Company. The documents listed below are collectively known as the "Closing Documents."

- i. A signed Special Warranty Deed to each Party's Respective Exchange Property in the form attached as Exhibit B-1 or Exhibit B-2, as applicable.
- ii. Evidence of each Party's authority to consummate this transaction.
- iii. Any notices or other documents or instruments provided for under this Agreement or reasonably necessary to convey the Party's Respective Exchange Property in accordance with this Agreement.
- v. A "non-foreign" certificate by each Party as required by Section 1445 of the Internal Revenue Code sufficient to establish that withholding of tax is not required in connection with the transfer of their respective Exchange Property.



- b. *Delivery of Deeds and Funds.*
  - i. City will deliver a Special Warranty Deed to the City Exchange Property in a form substantially similar to the one attached hereto as Exhibit B-1 to the Title Company. City will also deliver the amounts that City is obligated to pay under this Agreement to Title Company in readily available funds, acceptable to Title Company.
  - ii. JBK will deliver a Special Warranty Deed to the JBK Exchange Property in a form substantially similar to the one attached hereto as Exhibit B-2 to the Title Company. JBK will also deliver the amounts that JBK is obligated to pay under this Agreement to Title Company in readily available funds, acceptable to Title Company.
- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse funds in accordance with this Contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Possession.* City will deliver possession of the City's Exchange Property to JBK, subject to the Permitted Exceptions applicable to the City Exchange Property existing at Closing. JBK will deliver possession of the JBK Exchange Property to City, subject to the Permitted Exceptions applicable to the JBK Exchange Property existing at Closing.
- e. *Originals.* Each Party will deliver to the other the originals of Records pertaining to their Respective Exchange Property.

## 2. *Transaction Costs*

### a. *City Exchange Property*

- i. *City's Costs.* City will pay for the JBK Exchange Property Title Policy; one-half of the escrow fee charged by Title Company; the costs to prepare and file the deed; the costs to obtain, deliver, and record releases of all liens to be released at closing; the costs to record all documents to cure Title Objections agreed to be cured by City; Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession; the cost of certificates or reports of ad valorem taxes; the costs to deliver copies of the instruments described in Section A.3.; and City's expenses and attorney's fees.
- ii. *JBK's Costs.* JBK will pay one-half of the escrow fee charged by Title Company; the costs to obtain, deliver, and record all documents other than those to be recorded at City's expense; the costs to obtain the Survey, the additional premium for the "survey/area and boundary deletion" in the Title Policy, if the deletion is requested by JBK; the costs of work required by JBK to have the survey reflect matters other than those required under this Agreement; and JBK's expenses and attorney's fees.

- b. *JBK Exchange Property.*
- i. *JBK's Costs.* JBK will pay for the City Exchange Property Title Policy; one-half of the escrow fee charged by Title Company; the costs to prepare and file the deed; the costs to obtain, deliver, and record releases of all liens to be released at closing; the costs to record all documents to cure Title Objections agreed to be cured by JBK; Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession; the cost of certificates or reports of ad valorem taxes; the costs to deliver copies of the instruments described in Section A.3.; and JBK's expenses and attorney's fees.
  - ii. *City's Costs.* City will pay one-half of the escrow fee charged by Title Company; the costs to obtain, deliver, and record all documents other than those to be recorded at JBK's expense; the costs to obtain the Survey, the additional premium for the "survey/area and boundary deletion" in the Title Policy, if the deletion is requested by City; the costs of work required by City to have the survey reflect matters other than those required under this Agreement; and City's expenses and attorney's fees.
- c. *Ad Valorem Taxes.*
- i. *City Exchange Property.* City represents that it is entitled to an exemption from ad valorem taxes during the time it owned the City Exchange Property. If this exchange or JBK's use of the City Exchange Property results in the assessment of any ad valorem taxes for the City Exchange Property for the calendar year of Closing, all such taxes and any associated costs will be paid by JBK. JBK shall be responsible for notifying all taxing units having jurisdiction over the property of the change of ownership, if such notification is required by law, and JBK shall be responsible for any and all taxes, late fees or penalties assessed against the City Exchange Property by reason of JBK's failure to so note the change of ownership. City will, upon request, provide to JBK proof of City's ownership of the property prior to the date of Closing, and will assist JBK in demonstrating City's exemption from ad valorem taxes.
  - ii. *JBK Exchange Property.* Ad valorem taxes for the year of conveyance of the JBK Exchange Property will be prorated between City and JBK pursuant to ownership. JBK understands that City is entitled to an exemption from ad valorem taxes, therefore, ad valorem taxes on the JBK Exchange Property for all periods before the period in which Closing occurs must be paid by JBK at or before Closing.. If the assessment for the calendar year of Closing is not known at the Closing Date, JBK's payment will be based on taxes for the previous tax year, and JBK will adjust the payment in cash within thirty (30) days of when the actual assessment and taxes are known or as otherwise required by law. JBK shall obtain information concerning such taxes directly from the Tarrant Appraisal District. All taxes due as of

Closing will be paid at Closing. City shall be responsible for notifying all taxing units having jurisdiction over the property of the change of ownership, if such notification is required by law, and City shall be responsible for any and all taxes, late fees or penalties assessed against the JBK Exchange Property by reason of City's failure to so note the change of ownership. JBK will, upon request, provide to City proof of JBK's ownership of the property prior to the date of Closing.

3. *Issuance of Title Policy.* The Parties will cause Title Company to issue the title policies as soon as practicable after closing.

4. *Conditions Precedent.* This Contract and the Closing are subject to and contingent upon the following conditions being satisfied at or prior to Closing:

(a) The improvements on each of the Exchange Properties shall be demolished down to the dirt, and cleared from the site by the City at its sole cost and expense prior to conveyance.

(b) The City agrees to complete certain storm water drainage improvements to carry storm water underground running between 702 E. Broad Street and 708 E. Broad Street, Mansfield, Texas, to \_\_\_\_\_. The Parties have agreed that the City shall complete such demolition and removal of the improvements on or before \_\_\_\_\_, 202\_\_, at the City's sole cost and expense.

To provide a temporary easement to the City to allow access to the JBK Tract for completion of the demolition and improvements described in this Conditions Precedent paragraph, the Parties have agreed to enter into the Temporary Easement in the form attached hereto as **Exhibit "C"** and incorporated herein by reference for all purposes.

## **J. Miscellaneous Provisions**

1. *Notices.* Any notice required by or permitted under this Contract must be in writing. Any notice required by this Contract will be deemed to be delivered (whether actually received or not) three days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Contract. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, electronic mail, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

2. *Entire Contract.* This Contract, together with its exhibits, and any Closing Documents delivered at Closing constitute the entire agreement of the parties concerning the exchange of the City Exchange Property and the JBK Exchange Property. There are no oral representations, warranties, agreements, or promises pertaining to the exchange of the City Exchange Property and the JBK Exchange Property not incorporated in writing in the Closing

Documents or this Contract.

3. *Amendment.* This Contract may be amended only by an instrument in writing signed by the Parties.

4. *Assignment.* Neither Party may assign this Agreement or any of its rights or obligations under it without the other Party's prior written consent; any attempted assignment without such consent shall be void. This Agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

5. *Survival.* The obligations of this Contract that cannot be performed before termination of this Contract or before Closing will survive termination of this Contract or Closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this Contract, the Closing Documents will control.

6. *Choice of Law; Venue.* This Contract will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in Tarrant County, Texas, except as otherwise provided by applicable law.

7. *Waiver of Default.* It is not a waiver of default if the nondefaulting Party fails to declare immediately a default or delays taking any action with respect to the default.

8. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this Contract.

9. *Severability.* The provisions of this Contract are severable. If a court of competent jurisdiction finds that any provision of this Contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

10. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

11. *No Special Relationship.* The Parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

12. *Counterparts.* If this Contract is executed in multiple counterparts, all counterparts taken together will constitute this Contract.

13. *Waiver of Consumer Rights.* **EACH PARTY WAIVES ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41, et seq., OF THE TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, EACH PARTY VOLUNTARILY CONSENTS TO THIS WAIVER.**

14. This Contract is subject to the approval of the City of Mansfield City Council. Failure of approval of this Contract shall result in the immediate release of any and all obligations by the Parties to perform under this Contract.

*Signature Page Follows*

CITY OF MANSFIELD:

By: \_\_\_\_\_  
Joe Smolinski, City Manager, or designee

Date: \_\_\_\_\_

JBK Realty LLC

By: \_\_\_\_\_  
Jacob Kohanim, President

Date: \_\_\_\_\_

Title Company acknowledges receipt of the documents.

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit A-1**  
**Description of City Exchange Property**

**Exhibit A-2**  
**Description of JBK Exchange Property**



## **Exhibit B-1**

**Exhibit B-2**