

REAL ESTATE PURCHASE CONTRACT

This agreement is made and entered into this ____ day of _____, 2010, by and between the City of Stillwater, a municipal corporation, hereinafter referred to as "Stillwater", or "Seller," and Aggie Development, LLC, hereinafter referred to as "Aggie Development," or "Buyer,"

WITNESSETH:

WHEREAS, the City of Stillwater, a municipal corporation, is the owner of a parcel of land and improvements located at 701 to 707 South Main Street, Stillwater, Oklahoma, commonly known as the "Katz Building," and more particularly described as:

Lots 21, 22, 23 and 24, Block 29, ORIGINAL TOWN OF STILLWATER; and

WHEREAS, Aggie Development L.L.C., has offered to purchase said land and improvements; and

WHEREAS, the purchase price is equal to or exceeds the appraised value of said land and improvements; and

WHEREAS, Aggie Development intends lease the property to restaurant and commercial enterprises; and

WHEREAS, said operation will promote economic development in the Downtown Stillwater area and generate sales and ad valorem taxes which benefit Stillwater, Stillwater Public Schools, and Payne County; and

WHEREAS, Stillwater may convey title to said land and improvements subject to restrictions set forth in the Oklahoma Constitution and Statutes and Stillwater City Charter.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS AND AGREEMENTS HEREINAFTER SET FORTH, THE CITY OF STILLWATER AND AGGIE DEVELOPMENT L.L.C., DO HEREBY AGREE AS FOLLOWS:

1. PROPERTY: Aggie Development agrees to purchase from Stillwater and Stillwater agrees to sell, transfer and convey to Aggie Development all of its rights, title and interest in the following described land and improvements located in Stillwater, Oklahoma, to wit:

Lots 21, 22, 23 and 24, Block 29, ORIGINAL TOWN OF STILLWATER, also known as 701-707 South Main Street, Stillwater, Oklahoma,

together with all fixtures and improvements, and all appurtenances, subject to existing zoning ordinances, plat or deed restrictions, utility easements of record serving said land and improvements; and **less and except:** all the oil, gas and other minerals in and under and that may be produced from said land.

2. PURCHASE PRICE: Aggie Development agrees to pay Stillwater the sum of Five Hundred Eighty Thousand (\$580,000.00) at the time of closing as the total purchase price for the property. Tender of said purchase money is contingent upon Aggie Development obtaining acceptable financing within thirty (30) days from the date of publication in the *Stillwater*

NewsPress of the ordinance passed by the Stillwater City Council authorizing this sale as set forth in Paragraph 4, herein. Aggie Development may cancel this Contract upon written notice to Stillwater of its failure or inability to obtain such financing within this specific time frame. Funding required to complete this transaction shall be either cash, cashier's check or wire transfer.

3. CLOSING, FUNDING AND POSSESSION: Closing shall occur on or before **July 23, 2010**, unless extended as otherwise provided herein. Stillwater shall deliver a deed, abstract of title, and full possession of the land and improvements to Aggie Development at the time of closing. Aggie Development shall tender payment as provided in Paragraph 2 at the time of closing. Aggie Development shall be responsible for all closing costs and expenses associated with this transaction, including but not limited to any realtor or broker fees, documentary stamps, and recording fees.

4. CONFIRMATION OF SALE: *The value of the property subject to sale under this agreement exceeds two hundred and fifty thousand dollars (\$250,000.) in value. This transaction is therefore subject to the provisions of Section 4.2, Stillwater City Charter which provides as follows:*

The sale or lease of city property, real or personal, or the sale or other disposal of any interest therein the value of which property, lease or interest is more than two hundred fifty thousand dollars (\$250,000 .00), shall be made only :

(1) By authority of an ordinance approved or enacted at an election by an affirmative vote of a majority of the qualified voters of the city who vote on the question of approving or enacting the ordinance (the ordinance being submitted to the voters by the commission or by initiative of the voters); or

(2) By authority of a non-emergency ordinance passed by the commission, which shall be published in full in a newspaper authorized by law to publish legal publications within ten (10) days after its passage, and which shall include a section reading substantially as follows:

"Section _____. If one or more petitions with signatures of registered qualified voters of the city equal to at least twenty-five (25) percent of the total number of votes cast in the last scheduled general municipal election are filed with the city clerk within thirty (30) days after passage and publication of this ordinance, this ordinance shall not go into effect until the petition or petitions are finally found to be illegal and/or insufficient, or, if any such petition is found legal and sufficient, until the ordinance is approved at an election by a majority of the qualified voters voting on the question . If no petition with signatures is filed, this ordinance shall go into effect thirty (30) days after its passage and publication ."

Aggie Development acknowledges that this transaction is subject to said Charter provision and that it has no right to seek specific performance or any other remedy to compel the conveyance of the property should the voters reject the sale under this agreement. Aggie Development further acknowledges and agrees that it has no right to damages or any other compensation permitted under this agreement should the voters reject the sale of the property pursuant to this Charter provision.

5. WARRANTIES, INSPECTIONS: Aggie Development acknowledges and agrees that Stillwater, its officers and employees, are not experts regarding the condition of the property. No representations, warranties, or guarantees, expressed or implied, are made by Stillwater regarding the condition of the property or environmental hazards, and the building thereon is sold in an “as is” condition.

- A. **RIGHT TO INSPECT.** Aggie Development shall have thirty (30) days from the date of publication in the *Stillwater NewsPress* of the ordinance passed by the Stillwater City Council authorizing this sale as set forth in Paragraph 4, herein to complete any investigations, inspections, and reviews. Stillwater shall have water, gas and electricity turned on and serving the property for Aggie Development’s inspections.
- B. **ENTRY ONTO PREMISES.** Aggie Development, at its sole expense, shall have the right to enter upon the property, together with its representative(s), independent contractor(s) and/or any other person it deems qualified, to conduct any and all investigations, inspections, tests, studies and review. Excepting only the negligence of Stillwater or a condition caused or permitted by Stillwater, Aggie Development shall indemnify, protect, defend and hold Stillwater harmless from and against any and all claims, demands, losses, liabilities, costs, fees and expenses (including attorney’s and consultant’s fees) arising out of or related to Aggie Development’s entry onto the property in connection with any testing or investigation performed pursuant to this Contract. Aggie Development’s investigations, inspections and reviews may include, but may not be limited to, the following:
 - 1. Flood, Storm Water Run-off, Storm Sewer Back-up or Water History.
 - 2. Environmental Risks. Including, but not limited to soil, air, water, hydrocarbon, chemical, carbon, mold, radon gas and lead-based paint.
 - 3. Roof. Including, but not limited to structural members, roof decking, coverings and related components
 - 4. Structural Inspection
 - 5. Use of Property. Property use restrictions, building restrictions, easements, restrictive covenants, zoning ordinances and regulations
 - 6. Square Footage/Acreage. Aggie Development shall not rely on any quoted square footage and/or acreage and shall have the right to measure the land and improvements.
 - 7. All fixtures and equipment relating to plumbing, heating and cooling, electrical systems and any other equipment or systems.
 - 8. Wood Destroying Insects Inspection.
- C. **RIGHT TO CANCEL.** If Aggie Development determines after inspection that the land or improvements are not suitable for the intended use, it may cancel and terminate this Contract by delivering written notice to the Stillwater City Manager prior to the date of closing.
- D. **NO OBLIGATION TO REPAIR OR REMEDY DEFECTS.** Stillwater has no duty to repair or remedy any defect to the property discovered as a result of any inspection authorized under this Contract.
- E. **ACCEPTANCE OF PROPERTY.** Acceptance of title at closing by Aggie Development constitutes acceptance of the property in its then condition.

F. ASBESTOS INSPECTION, REMOVAL. Aggie Development may enter the building prior to the closing date for the purpose of conducting any asbestos inspection it deems appropriate. Stillwater shall pay up to Five Thousand Dollars (\$5,000.00) of the cost of such inspection. Should Aggie Development determine from such inspection that the cost of asbestos remediation is not economically feasible, it shall have the right to cancel this Agreement but such cancellation shall not relieve Stillwater from its obligation to pay for the cost of the inspection. Stillwater shall on or before the date of closing, place in escrow at Stillwater National Bank, the sum of Fifteen Thousand Dollars (\$15,000.00) to be used by Aggie Development to offset the cost of any asbestos remediation to the land and/or improvements for a period of five (5) years from the closing date. Any unused portion of said escrowed funds shall revert to Stillwater at the expiration of said period. If Aggie Development determines after inspection that the asbestos remediation is not economically feasible, it may cancel and terminate this Contract by delivering written notice to the Stillwater City Manager prior to the date of closing.

6 RISK OF LOSS: Unless otherwise provided, Stillwater shall assume all risk of loss to the property until transfer of title at closing.

7. TITLE EVIDENCE: Stillwater shall, within thirty (30) days from the date of publication in the *Stillwater NewsPress* of the ordinance passed by the Stillwater City Council authorizing this sale as set forth in Paragraph 4, herein, provide Aggie Development title evidence in the form of a current surface rights abstract. Aggie Development shall have ten (10) days after receipt to examine said abstract and to deliver to Stillwater any objections thereto. In the event the abstract is not made available to Aggie Development within ten (10) days prior to the closing date, said closing date shall be extended to allow Aggie Development the ten (10) days from receipt thereof to complete its examination.

Aggie Development agrees to accept title subject to: (i) utility easements serving the land and improvements, (ii) building and use restrictions of record, (iii) set back and building lines, (iv) zoning regulations, (v) reserved and severed mineral rights, and (vi) reservations or easements of record, which shall not be considered objections for requirements of title.

Stillwater, upon receipt of any title requirements reflected in an Attorney's Title Opinion or Title Insurance Commitment based upon the standard of marketable title set out in the Title Examination Standards of the Oklahoma Bar Association, shall make reasonable efforts to obtain and/or execute all documents necessary to cure such title requirements identified by title examiner. The parties agree to extend the closing date to permit such remediation. Should Stillwater fail to cure all title requirements identified herein within thirty (30) days of notice thereof, Aggie Development may cancel this Contract.

8. REAL ESTATE TAXES, ASSESSMENTS: The property is not presently on the ad valorem tax rolls because Stillwater is a tax-exempt entity under Oklahoma law. Any ad valorem or other real, personal, or business property taxes accruing after transfer of title shall be the sole responsibility of Aggie development. The property is located within the boundaries of the Stillwater Business Improvement & Special Services District #1 (BID #1). Stillwater has paid the general assessment for the current fiscal year that expires on October 30, 2010. Aggie Development shall be liable for any general assessments after said date or any special assessments levied by BID #1 after transfer of title under this Contract.

9. MEDIATION. The parties agree to submit any dispute arising under the Contract to non-binding mediation prior to seeking relief in a court of law.

10. BREACH AND FAILURE TO CLOSE.

A. BREACH BY SELLER. **Subject to the provisions of Paragraph 4, herein,** if Aggie Development performs all of its obligations under the Contract, and if, within five (5) days after the date specified for closing under Paragraph 3, Stillwater fails to convey the title or fails to perform any of its other obligations under this Contract, then Aggie Development shall be entitled to either cancel and terminate this Contract and return the abstract to Stillwater, or pursue any other remedy available at law or in equity, including specific performance.

B. BREACH BY BUYER. **Subject to the provisions of Paragraph 4, herein** if, after the Stillwater has performed all of its obligations under this Contract, and if, within five (5) days after the date specified for closing under Paragraph 3, Aggie development fails to provide funding, or to perform any of its other obligations under this Contract, then Stillwater may, at its option, cancel and terminate this Contract, or pursue any other remedy available at law or in equity, including specific performance.

11. NOTICE. Any notice provided for herein shall be given in writing, sent by (a) personal delivery, (b) United States mail, postage prepaid, or (c) by facsimile, to the Escrow Agent, with copies to the other parties, addresses as follows:

Closing Agent:

Real Estate Professionals
c/o Katelin Bartmann
723 S. Main
Stillwater, Oklahoma 74074
Phone (405) 372-5151
Fax (405) 372-8188

Buyer:

Aggie Development, LLC
c/o Robert Bartmann
1502 West Fir
Perry, Oklahoma 73077
Phone (405) 747-6124
FAX (580) 336-5589

Seller:

City of Stillwater, Oklahoma
a municipal corporation
c/o Dan Galloway, City Manager
723 S. Lewis
Stillwater, OK 74074
Phone (405) 742-8209
Fax (405) 742-8208

Or such other address as shall hereafter be designated in writing.

12. GOVERNING LAW: This contract is governed by the laws of the State of Oklahoma.

13. ENTIRE AGREEMENT, MODIFICATION: This Contract constitutes the final and entire agreement between the City of Stillwater and Aggie Development, L.L.C., and neither the parties nor their officers, employees, or agents shall be bound by any term, condition or representation not written herein. All prior verbal or written negotiations, representations and agreements are superseded by the Contract, which may only be modified or assigned by a further written agreement of Seller and Buyer.

DATED this ____ day of _____, 2010.

CITY OF STILLWATER, OKLAHOMA
a Municipal Corporation

NATHAN BATES, MAYOR

(SEAL)

ATTEST:

MARCY ALEXANDER, CITY CLERK

APPROVED AS TO FORM AND LEGALITY THIS ____ DAY OF _____, 2010.

JOHN E. DORMAN
CITY ATTORNEY

AGGIE DEVELOPMENT, LLC

ROBERT BARTMANN, MANAGER