

**EARNEST MONEY CONTRACT**  
(Unimproved Property)

Seller: Hector Guerra

Purchaser: County of Hidalgo, Texas

Escrow Agent: Valley Land Title Company  
612 Nolana, Suite 570  
McAllen, Texas 78504

Title Company: Valley Land Title Company  
612 Nolana, Suite 570  
McAllen, Texas 78504

Seller agrees to sell to Purchaser, who agrees to purchase, the property described in this Contract upon the following terms and conditions.

**ARTICLE I**

**THE PROPERTY**

The property is that certain tract of real property located in Hidalgo County, Texas, (the "Property"), and more particularly described on Exhibit "A", attached hereto, together with any rights and appurtenances pertaining to the Property, including any right, title and interest of Seller in and to adjacent streets, alleys and rights-of-way.

**ARTICLE II**

**PURCHASE PRICE**

2.1 The total purchase price ("Purchase Price") for the Property shall be the sum of THIRTY-SIX THOUSAND EIGHT HUNDRED AND NO/100THS DOLLARS (\$36,800.00), payable in cash at Closing.

2.2 On execution of this Contract, Purchaser shall deposit with the Escrow Agent the sum of \$1,000.00 as Earnest Money to bind this sale. The Earnest Money shall be deposited by the Escrow Agent in an interest bearing account until the date of Closing, at which time it and the interest earned thereon shall be returned to Purchaser provided Purchaser is not default hereunder. In the event of Purchaser's default, the Earnest Money shall be disposed of as hereinafter provided.

2.3 Termination Option. For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Purchaser's agreement to pay Seller One Hundred Dollars (\$100.00) (Option Fee) within 2 days after the effective date of this Contract, Seller grants Purchaser the unrestricted right to terminate this Contract by giving notice of termination

to Seller within Sixty (60) days after the Effective Date of the Feasibility Study as contained in Article VI of this contract such effective date being the same date of Seller's written notice as required in Article VI of this contract. If Purchaser gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Purchaser. The Option will be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

3.1 Seller represents to Purchaser as follows, with respect to the Property:

A. There are no pending condemnation proceedings or special assessments of any nature affecting any part of the Property, and Seller has received no notice that any such proceedings or assessments are contemplated.

B. Seller has received no notice of any action, claim, suit, proceeding or investigation, pending or threatened against Seller affecting any portion of the Property.

C. There are no attachments, executions or assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy pending, contemplated or threatened against Seller or the Property.

D. Seller has paid all local taxes that have been assessed against Seller or the Property.

E. Seller has disclosed to Purchaser all known environmental conditions affecting the Property.

F. Seller will permit the Purchaser and its environmental consultants to enter upon the Property during normal business hours to conduct environmental study(s) and assessments to determine the environmental condition of the Property.

G. Seller will permit Purchaser and its environmental consultant(s) to have access to books and records of the Seller, if any, relating to the environmental condition of the Property.

H. There are no actions, suits, claims, assessments, or proceedings pending or, to the knowledge of Seller, threatened that could materially adversely affect the ownership, operation, or maintenance of the Property or Seller's ability to perform hereunder.

I. There are no leases or other agreements in effect relating to the surface estate of the real property described on Exhibit "A" attached hereto.

J. Seller shall immediately notify Purchaser of any material change in respect of the Property or any information heretofore or hereafter furnished to Purchaser in respect of the Property.

3.2 This Contract is contingent upon and subject to the conditions that, as of the date of Closing there shall not have been any material error, variance or misstatement in the representations or material breach in the warranties made by Seller in this Contract. If, prior to Closing, Purchaser discovers that one or more of the representations of Seller herein are materially untrue or inaccurate, or if any part or all of the Property fails to pass any inspection of any governmental entity, Purchaser shall have the option of (i) terminating this Contract and receiving the Earnest Money, or (ii) waiving all or a part of the conditions in writing and closing the sales transaction in accordance with the terms and provisions of this Contract.

3.3 Purchaser represents and warrants to Seller, which representations and warranties shall survive Closing, that Purchaser has the authority to purchase the Property, make the representations contained herein and to perform all terms and conditions required of Purchaser herein.

## **ARTICLE IV**

### **TITLE**

4.1 Within ten (10) days from the date of this Contract, Seller shall, at Seller's sole expense, cause to be furnished to Purchaser a current Commitment for Owner Policy of Title Insurance ("the Title Binder") issued by Title Company, describing the Property, naming Purchaser as the prospective insured and showing as the policy amount the total purchase price for the Property. The Title Binder shall commit the Title Company to issue an Owner Policy of Title Insurance guaranteeing Purchaser's title to the Property to be good and indefeasible.

4.2 At the same time that Seller causes the Title Binder to be furnished to Purchaser, Seller shall also cause to be delivered to Purchaser true copies of all recorded instruments referred to in the Title Binder as conditions or exceptions to title to the Property.

## ARTICLE V

### SURVEY

Within forty-five (45) days from the Effective Date, PURCHASER, at its sole cost and expense, shall obtain and deliver one (1) copy to OWNER and one (1) copy to the Title Company of a current minimum standard detail requirements for land title surveys (the "Survey") prepared by a registered public surveyor licensed in the State of Texas and approved by PURCHASER showing the Property, together with a corresponding metes and bounds field-notes description of the Property in Exhibit "A". The Survey and description shall be prepared in a form acceptable to PURCHASER and to permit the Title Company to delete the standard survey exception. The Survey shall include the plotting and permanent location of easements, rights-of-way, encroachments, improvements, fences, building set-back lines and other matters located on the ground. The Survey shall fix, locate, stake, and permanently monument all exterior boundary lines and corners of the Property. The surveyor shall additionally calculate and indicate on the Survey the square footage, expressed to five significant figures, and the square feet of land contained within the boundaries of the Property and the square feet within any easement, right-of-way, or encroachment, each expressed to five significant figures. The surveyor shall additionally calculate and indicate on the Survey the acreage and square feet of land within the boundaries of the Property, if any, that lie within the 100-year flood plan (as defined in 44 Code of Federal Regulations, '59.1), or flood hazard zone or fault zone (herein collectively referred to as "Hazard Zone"). The Survey shall contain a certification signed by the surveyor, in form acceptable to the Title Company and PURCHASER.

If the Survey shows any matters that are objectionable to PURCHASER, PURCHASER shall so notify OWNER within thirty (30) days from the date of PURCHASER'S receipt of the Survey. Upon the expiration of said (30) day period, PURCHASER shall be deemed to have accepted all matters disclosed on the Survey (except for any matters to which notice under the preceding sentence has been given to OWNER) and such matters may be shown as Permitted Exceptions on the owner policy of title insurance required of Owner under this Option. OWNER shall, within fifteen (15) days of receipt of said notice of objections, have the option, in its sole discretion, of either (i) terminating this Option Contract, in which event all Option Payments received by Owner hereunder shall be returned to PURCHASER and neither party shall have any further obligations to the other or (ii) clearing the objections so specified.

5.1 Purchaser shall have a period of twenty (20) business days following the date of receipt by Purchaser of the Survey described in Article 5 hereof to give Seller written notice of any title exceptions it deems objectionable. If Purchaser gives such notice to Seller, Seller shall use Seller's best efforts to cure such objections, but shall not be obligated to institute litigation for such purpose. If Purchaser gives notice of title objections and Seller does not cure the objections within fifteen (15) days following receipt of the notice from Purchaser, then Purchaser may either:

(a) terminate this Contract by giving written notice thereof to Seller and receive back the Earnest Money; or

(b) waive the objections and purchase the Property subject to the objections which shall be deemed to be Permitted Encumbrances.

5.2 All title exceptions not objected to or objected to and later waived shall be deemed to be Permitted Encumbrances.

## **ARTICLE VI**

### **FEASIBILITY STUDY**

So long as this Contract is in effect and Purchaser is not in default hereunder, Purchaser shall have sixty (60) days following the date of this Contract for Purchaser or its representatives to enter upon the Property for the purpose of inspecting the Property and any improvements thereon and conducting engineering studies (e.g., platting, utility cost and availability, sewer, drainage and road and street improvements), improvements inspections, architectural drawings regarding placement of improvements on the Property, environmental studies, of the Property and any improvements thereon, soil and subsoil tests, including the drilling of test holes and examining permits, legal requirements for operation of the Property, reviewing reasonable restrictions on the Property by Seller in order to determine the suitability of the Property for Purchaser's use, and such other tests or studies that Purchaser deems advisable. If any such test, study inspection, information or architectural drawing, in Purchaser's sole opinion, shall reveal that the Property is unsuitable or undesirable for Purchaser's use, then Purchaser may terminate this Contract without further liability, in which event Purchaser shall receive back the Earnest Money. However, Purchaser shall not permit any liens to attach to the Property by reason of the exercise of this right of inspection or study, nor shall Purchaser interfere with the rights of any party then in possession of the Property. All entry on the land prior to closing shall be at Purchaser's risk.

## **ARTICLE VII**

### **CLOSING**

7.1 Closing shall be held within thirty (30) days following the date of the expiration of the Feasibility Study described in Article VI hereof at the office of Valley Land Title Company, McAllen, Texas at the time as may be agreed upon by the parties.

7.2 At the Closing Seller shall deliver to Purchaser the following:

A. A General Warranty Deed duly executed and in recordable form conveying fee simple title to the Property to Purchaser free and clear of all liens and

encumbrances, except Permitted Encumbrances as defined in Section 5.2, above.

B. An Owner's Policy of Title Insurance issued by the Title Company in the amount of the purchase price insuring good and indefeasible title to the Property in Purchaser. The Policy shall be in the form prescribed by the State Board of Insurance of Texas and shall contain only those exceptions which constitute Permitted Encumbrances. The standard survey exception shall be deleted except as to shortages in area.

C. Tax Certificates from all taxing authorities showing no delinquent taxes against the Property.

D. Possession of the Property.

7.3 At the Closing, Purchaser shall deliver to Seller a certified or cashier's check for the amount of the Purchase Price.

## **ARTICLE VIII**

### **ADJUSTMENTS AND EXPENSES**

8.1 Real estate taxes for the year of Closing are to be adjusted and prorated as of the date of Closing. In the event that actual tax figures for the year of Closing are not available at Closing, an estimated proration of taxes shall be made on the basis of the tax rate for the preceding year applied to the latest assessed valuation. Purchaser shall pay any and all rollback taxes resulting from a change of use by Purchaser following date of Closing. If Seller's change in use of the Property prior to closing or denial of a special use valuation on the Property claimed by Seller results in assessments for periods prior to closing, the assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

8.2 Purchaser shall pay costs of recording instruments presented by the Seller, the survey and its own attorney's fees. The cost of the Owner Policy of Title Insurance, tax certificates, and all other expenses of Closing shall be paid by Seller.

## **ARTICLE IX**

### **DEFAULT**

If Purchaser fails to comply with the obligations as set out in this Agreement, Seller may terminate this Contract and receive the Earnest Money as liquidated damages. If Seller fails to comply herewith for any reason, Purchaser may terminate this Contract and receive the Earnest Money as Purchaser's sole remedy, thereby releasing Seller from this Contract or enforce specific performance.

## **ARTICLE X**

### **ATTORNEY'S FEES**

Any signatory to this Contract who is the prevailing party in any legal proceeding against any other signatory brought under or with relation to this Contract or transaction, shall be additionally entitled to recover Court costs and reasonable attorneys' fees from the non-prevailing party.

## **ARTICLE XI**

### **CONDEMNATION AND CASUALTY LOSS**

11.1 If prior to the Closing all or any substantial portion of the Property is condemned, either party shall have the right to terminate this Contract upon giving written notice to the other party within ten (10) days of the date Seller notifies Purchaser in writing of such condemnation. In the event of such termination, Purchaser shall be entitled to the return of the Earnest Money. If neither party elects to terminate this Contract, then the Closing shall take place, as herein provided, without abatement of the purchase price and Seller shall assign to Purchaser at the Closing, all interest of Seller in any condemnation awards which may be payable to Seller as a result of the condemnation. If less than a substantial portion of the Property is condemned, neither party may terminate this Contract but all interest of Seller in any condemnation proceeds shall be assigned by Seller to Purchaser at the Closing.

11.2 A substantial portion is defined to be either five percent (5%) or more in value of the Property.

11.3 Casualty Loss. If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Purchaser may (a) terminate this contract and the earnest money will be refunded to Purchaser (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

## **ARTICLE XII**

### **LIENS AND TAXES**

12.1 The existence of any other liens or encumbrances which secure an obligation to pay money shall not be objections to title provided that properly executed instruments in recordable form necessary to satisfy the same are delivered to Purchaser at the Closing, together with recording or filing fees, and such liens or encumbrances may be paid out of the cash consideration, if any, paid by Purchaser at the Closing. Purchaser, if request is made within a reasonable time prior to the date of Closing, agrees to provide at the Closing separate certified checks, as requested, aggregating the balance of the purchase price, to facilitate the satisfaction of any such liens or encumbrances.

12.2 Unpaid federal or state inheritance tax which is a lien against the Property shall be no objection to title, provided Seller at Closing agrees to provide at the Closing separate certified checks, as requested, aggregating the balance of the purchase price, to facilitate the satisfaction of any such liens or encumbrances.

## **ARTICLE XIII**

### **ASSIGNMENT**

13.1 This Contract may not be assigned by Purchaser without Seller's prior written consent.

## **ARTICLE XIV**

### **SURVIVAL**

14.1 Any representations, warranties or covenants of the parties, as well as any rights and benefits of the parties, shall survive the Closing and not be merged therein.

## **ARTICLE XV**

### **MISCELLANEOUS**

15.1 Time shall be of the essence of this Contract.

15.2 This Contract and all of the terms, provisions and covenants contained herein shall apply to, be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns.

15.3 The captions used in connection with the paragraphs in this Contract are for convenience only and are not intended in any way to amplify or limit the meaning of the language contained in this Contract, or be used in interpreting the meanings and provisions of this Contract.

15.4 This Contract shall be construed and interpreted under the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas.

15.5 In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

15.6 All notices, demands or requests required or permitted under this Contract shall be in writing, and shall be deemed to have been properly given, whether or not actually received, when the same have been deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the appropriate party at the address given for such party at the beginning of this Contract.

15.7 This Contract contains the entire agreement between the parties and supersedes all prior agreements and understandings between the parties concerning the Property, and it shall not be amended, modified, supplemented or changed in any way except by written agreement of the parties.

15.8 Seller agrees to indemnify and hold harmless Purchaser from any and all costs, expenses or damages resulting from any claims for brokerage fees or other similar form of compensation made by any real estate broker or other person or entity because of the sale of the Property.

15.9 Should either party be in default under any of the terms of this Contract, the non-defaulting party shall so notify the defaulting party in writing and the defaulting party shall have a period of twenty (20) days from the receipt of such notice to cure the default.

15.10 In addition to the acts recited in this Contract to be performed by Seller and Purchaser, the parties hereto agree to perform or cause to be performed at the Closing or after the Closing, any and all such further acts as may be reasonably necessary to consummate transactions contemplated hereby.

15.11 In the event that this Contract or any provision hereof is construed or determined to be ambiguous by any Court of Law, then in that event the parties agree that each through its attorney has contributed to the preparation of this Contract and have jointly written or composed the clauses herein contained; and neither party hereto should

be given any advantage over the other under the laws of construction of instruments based upon the authorship hereof.

15.12 The Earnest Money is deposited with Escrow Agent with the understanding that Escrow Agent (i) does not assume or have any liability for performance or nonperformance of any party; (ii) has the right to require the receipt, release and authorization in writing of all parties before paying the Earnest Money to any party; and (iii) is not liable for interest or other charge on the funds held. If any party unreasonably fails to agree in writing to an appropriate release of Earnest Money, then such party shall be liable to the other parties as provided in Article IX. At Closing, Earnest Money plus interest accrued thereon shall be applied to any cash down payment required, next to Purchaser's closing costs and any excess refunded to Purchaser.

15.13 If Seller is not a foreign person, as defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act, as amended (the Federal Tax Law), then at the Closing, Seller will deliver to Purchaser a certificate so stating, in a form complying with the Federal Tax law. If Seller is a foreign person or if Seller fails to deliver the required certificate at the Closing, then in either such event the funding to Seller, at the Closing, will be adjusted to the extent required to comply with the withholding provisions of the Federal Tax law; and although the amount withheld will still be paid at the Closing by Purchaser, it will be retained by the Title Company as Escrow Agent (the reasonable fees of which shall be paid by Seller at the Closing) for delivery to the Internal Revenue Service together with the appropriate Federal Tax law forwarding forms, and with copies being provided both to Seller and to Purchaser.

15.14 If Seller has not executed and delivered this Earnest Money Contract to Purchaser on or before \_\_\_\_\_, 2009, Purchaser's offer to purchase the Property shall automatically terminate and this Earnest Money Contract shall be of no further force and effect.

15.15 **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communication required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to County:                   Hidalgo County, Texas  
  Attention: County Judge  
  P.O. Box 758  
  Edinburg, Texas 78540-0758

If to Seller:                    Hector Guerra  
\_\_\_\_\_  
\_\_\_\_\_

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

The date of this Contract is the \_\_\_\_\_ day of March, 2009 (the "Effective Date").

SELLER:

\_\_\_\_\_  
HECTOR GUERRA

PURCHASER:

\_\_\_\_\_  
By: Juan de Dios (J. D.) Salinas, III  
Hidalgo County Judge

ATTEST:

\_\_\_\_\_  
Arturo Guarjardo, Hidalgo County Clerk

Receipt of a fully executed Contract and \$1,000.00 earnest money in the form of a check are hereby acknowledged this \_\_\_\_ day of \_\_\_\_\_, 2009 at \_\_\_\_\_, \_\_\_\_\_.M.

ESCROW AGENT:

VALLEY LAND TITLE COMPANY

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

Seller and Purchaser designate the following named attorneys to represent their respective interest herein:

PURCHASER'S ATTORNEY:

Atlas & Hall, L.L.P.

Attn: Stephen L. Crain

818 Pecan

McAllen, Texas 78501

(956) 682-5501 Telephone

(956) 686-6109 Facsimile

SELLER'S ATTORNEY:

EXHIBIT "A"

Lots Sixteen (16) and Seventeen (17), Monte Alto Heights, Hidalgo County, Texas.