

# **PURCHASE AGREEMENT**

**PURCHASER:** City of Texas City, Texas

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## **PURCHASE AGREEMENT**

### **TERM SHEET**

General Description of Premises: Approximately 5.073 Acres of Land at 911 Highway 146 North,  
Texas City, Texas 77590

#### **Basic Agreement Provisions**

1. Date of this Agreement: \_\_\_\_\_, 2010
2. Purchaser: City of Texas City, Texas, a municipal corporation
3. Seller: Ford Leasing Development Company LLC,  
a Delaware limited liability company
4. Purchase Price: \$689,000.00
5. Purchase Price Payable as follows:
  - a) Deposit \$68,900.00
  - b) Balance on Closing Date \$620,100.00
6. Notices:
  - a) Seller:  
Ford Leasing Development Company LLC  
330 Town Center Drive, Suite 1100  
Dearborn, MI 48126  
Attention: J. Lynch
  - Copy to: Emily E. Smith-Sulfaro, Esq.  
General Counsel and Secretary  
Ford Motor Land Development Company  
330 Town Center Drive, Suite 1100  
Dearborn, MI 48126
  - b) Purchaser: City of Texas City  
Matthew T. Doyle, Mayor  
1801 – 9<sup>th</sup> Avenue North  
Texas City, TX 77590
  - Copy to: Ronald F. Plackemeier  
Lyons & Plackemeier, PLLC  
P.O. Drawer 2789  
Texas City, TX 77592-2789

7. Broker: None

**IN WITNESS WHEREOF**, Purchaser and Seller have executed this Purchase Agreement to which this Term Sheet is attached by signing and dating this Term Sheet and by initialing the first page of the Agreement.

Purchaser:

**City of Texas City, Texas**  
a municipal corporation

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

Its: \_\_\_\_\_

Seller:

**Ford Leasing Development Company LLC,**  
a Delaware limited liability company

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

Its: \_\_\_\_\_

# EXHIBIT 1

E-1

## Legal Description of Land

Part of Lot 6, Subdivision "I", Kohfeldt's Re-Subdivision of the James Smith Survey, Galveston County, Texas described by metes and bounds as follows: Commencing at the Northwest corner of Lot 1 same being the Northeast corner of Lot 2, Subdivision "I", Kohfeldt's Re-Subdivision of the James Smith Survey, Galveston County, Texas, according to the map or plat of said subdivision recorded in Vol. 245, Page 290, in the Office of the County Clerk of Galveston county, Texas, said corner lying in the centerline of an original 60 foot wide road now known as F.M. 1764 as per deeds recorded in Vol. 1869, Page 311 and Vol. 1869, Page 258, at a distance of 660 feet cross the Southwest corner of Lot 1 and the Northwest corner of Lot 6, in all, a distance of 1040.00 feet; THENCE N 89 degrees 56 minutes E, parallel to the North line of Lot 6, a distance of 198.28 feet to the place of the beginning of the tract hereinafter described; THENCE from said beginning corner continuing N 89 degrees 56 minutes E, parallel to the North line of Lot 6, a distance of 345.04 feet to a point for corner in the Westerly right of way line of S.H. 146; THENCE along the West right of way line of S.H. 146 S 2 degrees 44 minutes 20 seconds E, 230.28 feet, S 46 degrees 26 minutes 46 seconds W, 290.3 feet to a point for corner in the North right of way line of 9th Avenue North; THENCE S 89 degrees 56 minutes W, along the North right of way line of 9th Avenue North and parallel to the South line of Lots 6 and 5, a distance of 334.72 feet to a point for corner; THENCE N 0 degrees 04 minutes W, parallel to the West line of Lot 6, a distance of 250.00 feet to the place of beginning and containing 87,500 square feet, more or less.

DESCRIPTION OF A 3.0759 ACRE TRACT BEING PART OF LOT 6 IN SUBDIVISION "I", KOHFELDT'S RE-SUBDIVISION OF THE JAMES SMITH SURVEY, TEXAS CITY, GALVESTON COUNTY, TEXAS

According to the map or plat recorded in Volume 245, Page 290 in the Office of the County Clerk of Galveston County, Texas.

TRACT DESCRIPTION:

COMMENCING at the Northeast corner of Lot 2, Subdivision "I" Kohfeldt's Re-Subdivision of the James Smith Survey, Galveston County, Texas according to the map or plat recorded in Volume 245, Page 290 in the Office of the County Clerk of Galveston County, Texas, said corner lying in the centerline of an original 60 foot right of way known as F. M. 1764;

THENCE S0°04'E, along the common line between Lots 1 and 2, a distance of 230.0 feet to the South line of F. M. 1764 as per deeds recorded in Volume 1869, Page 311 and Volume 1869, Page 258 in the Office of the County Clerk of Galveston County, Texas;

THENCE S89°56'W, along the said South line of F. M. 1764 and parallel to the North line of Lots 1 and 2, a distance of 721.70 feet to the Easterly line of the G.H. & S.F.R.R., 100 foot right of way, and the West line of said Lot 2;

THENCE S11°41'35"E, along the West line of said Lots 2 and 5 and the Easterly line of said railroad right of way, a distance of 623.80 feet;

THENCE N89°56'E, parallel to the North line of Lots 5 and 6 and the South line of F. M. 1764, a distance of 644.26 feet to the place of beginning of the 3.0759 acre tract hereinafter described;

THENCE from said beginning corner S00°04'00"E, parallel to the West line of Lot 6, a distance of 449.00 feet to a 3/8" iron rod for corner in the South line of Lot 6, said point lying in the North right of way line of 9th Avenue North;

THENCE N89°56'00"E, along the South line of Lot 6 and along the North right of way line of 9th Avenue North, a distance of 150.00 feet to a 3/8" iron rod for corner;

THENCE N00°04'00"W, parallel to the West line of Lot 6, a distance of 250.00 feet to a 3/8" iron rod for corner;

THENCE N89°56'00"E, parallel to the North line of Lot 6, a distance of 345.04 feet to a 3/8" iron rod for corner in the West right of way line of F. M. 646;

THENCE, along the West right of way line of F. M. 646, N02°44'20"W, 7.10 feet and N06°09'42"W, 193.00 feet to a 3/8" iron rod for corner;

THENCE S89°56'00"W, parallel to the North line of Lot 6, a distance of 474.22 feet to the place of beginning.

**EXHIBIT 3**

**E-3**

**SPECIAL WARRANTY DEED**

State of Texas )

) ss

County of Galveston )

KNOW ALL PERSONS BY THESE PRESENTS:

That **FORD LEASING DEVELOPMENT COMPANY LLC**, a Delaware limited liability company, having a mailing address of 330 Town Center Drive, Suite 1100, Dearborn, MI 48126, ("Grantor"), for an inconsideration of the sum of Six Hundred Eighty Nine Thousand and 00/100 Dollars (\$689,000.00) and other good and valuable consideration paid by **THE CITY OF TEXAS CITY, TEXAS, a municipal corporation**, having a mailing address of **1801 – 9<sup>TH</sup>** Avenue North, Texas City, Texas 77590 ("Grantee") the receipt and sufficiency of which are hereby acknowledged and confessed, subject to the exceptions, liens, encumbrances, terms and provisions hereinafter set forth and described, as GRANTED, SOLD and CONVEYED, and by these presents DOES HEREBY GRANT, SELL AND CONVEY unto Grantee all of the certain tract of land located in Galveston County, Texas, as more particularly described in Schedule "A" attached hereto and incorporated herein for all purposes (the "Property"),

**SUBJECT TO**

Those matters set forth on Schedule "B" attached hereto and made a part hereof.

TO HAVE AND TO HOLD the Property, subject to the exceptions and reservations described herein, unto Grantee, its successor and assigns forever; and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof by, through or under GRANTOR, but not otherwise.

GRANTEE ACKNOWLEDGES THAT GRANTOR HAS NOT MADE, AND DOES NOT MAKE, ANY REPRESENTATION AS TO THE PHYSICAL CONDITION, OR ANY OTHER MATTER AFFECTING OF RELATED TO THE PROPERTY (OTHER THAN WARRANTIES OF TITLE AS PROVIDED AND LIMITED HEREIN). GRANTEE EXPRESSLY AGREES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND GRANTOR EXPRESSLY DISCLAIMS, AND GRANTEE ACKNOWLEDGES AND ACCEPTS THAT GRANTOR HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS, WARRANTIES, OR GUARANTIES OF ANY KIND, ORAL OR WIRTTEN, EXPRESS OR IMPLIED (EXCEPT AS TO TITLE AS HEREIN PROVIDED AND LIMITED), CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, (I) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY, (II) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO ANY IMPROVEMENTS TO OR UPON THE PROPERTY, AND (III) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR, OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS DEED, GRANTEE IS NOT ASSUMING ANY LIABILITY FOR ANY ENVIRONMENTAL CONDITION EXISTING AS OF THE DATE OF RECORDATION OF THIS DEED, UNLESS GRANTEE WOULD OTHERWISE BE LIABLE UNDER APPLICABLE ENVIRONMENTAL LAWS OR REGULATIONS.

By acceptance of this Special Warranty Deed, Grantee assumes all payment of all real and personal property taxes on the Property for the current and subsequent years.

Grantee acknowledges that the undersigned individual signatory for Grantor is executing this document solely in his or her capacity a Authorized Agent for and on behalf of Grantor, and not individually, and any and all liabilities in connection herewith are solely those of Grantor.

IN WITNESS WHEREOF, this Special Warranty Deed has been executed by Grantor as of the \_\_\_\_ day of \_\_\_\_\_, 2010.

GRANTOR:

**FORD LEASING DEVELOPMENT COMPANY LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF MICHIGAN

)

)SS

COUNTY OF WAYNE

)

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, personally known to me (or proved to me on the  
basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Print Name:

Notary Public, \_\_\_\_\_ County, Michigan

My Commission Expires: \_\_\_\_\_

MAIL TO:      Grantee

SEND SUBSEQUENT TAX BILLS TO:  
Grantee



## SCHEDULE "A" TO SPECIAL WARRANTY DEED

Part of Lot 6, Subdivision "I", Kohfeldt's Re-Subdivision of the James Smith Survey, Galveston County, Texas described by metes and bounds as follows: Commencing at the Northwest corner of Lot 1 same being the Northeast corner of Lot 2, Subdivision "I", Kohfeldt's Re-Subdivision of the James Smith Survey, Galveston County, Texas, according to the map or plat of said subdivision recorded in Vol. 245, Page 290, in the Office of the County Clerk of Galveston county, Texas, said corner lying in the centerline of an original 60 foot wide road now known as F.M. 1764 as per deeds recorded in Vol. 1869, Page 311 and Vol. 1869, Page 258, at a distance of 660 feet cross the Southwest corner of Lot 1 and the Northwest corner of Lot 6, in all, a distance of 1040.00 feet; THENCE N 89 degrees 56 minutes E, parallel to the North line of Lot 6, a distance of 198.28 feet to the place of the beginning of the tract hereinafter described; THENCE from said beginning corner continuing N 89 degrees 56 minutes E, parallel to the North line of Lot 6, a distance of 345.04 feet to a point for corner in the Westerly right of way line of S.H. 146; THENCE along the West right of way line of S.H. 146 S 2 degrees 44 minutes 20 seconds E, 230.28 feet, S 46 degrees 26 minutes 46 seconds W, 290.3 feet to a point for corner in the North right of way line of 9th Avenue North; THENCE S 89 degrees 56 minutes W, along the North right of way line of 9th Avenue North and parallel to the South line of Lots 6 and 5, a distance of 334.72 feet to a point for corner; THENCE N 0 degrees 04 minutes W, parallel to the West line of Lot 6, a distance of 250.00 feet to the place of beginning and containing 87,500 square feet, more or less.

DESCRIPTION OF A 3.0759 ACRE TRACT BEING PART OF LOT 6 IN  
SUBDIVISION "I", KOHFELDT'S RE-SUBDIVISION OF THE JAMES SMITH  
SURVEY, TEXAS CITY, GALVESTON COUNTY, TEXAS

According to the map or plat recorded in Volume 245, Page 290 in  
the Office of the County Clerk of Galveston County, Texas.

TRACT DESCRIPTION:

COMMENCING at the Northeast corner of Lot 2, Subdivision "I"  
Kohfeldt's Re-Subdivision of the James Smith Survey, Galveston  
County, Texas according to the map or plat recorded in Volume 245,  
Page 290 in the Office of the County Clerk of Galveston County,  
Texas, said corner lying in the centerline of an original 60 foot  
right of way known as F. M. 1764;

THENCE S0°04'E, along the common line between Lots 1 and 2, a  
distance of 230.0 feet to the South line of F. M. 1764 as per deeds  
recorded in Volume 1869, Page 311 and Volume 1869, Page 258 in the  
Office of the County Clerk of Galveston County, Texas;

THENCE S89°56'W, along the said South line of F. M. 1764 and  
parallel to the North line of Lots 1 and 2, a distance of 721.70  
feet to the Easterly line of the G.H. & S.F.R.R., 100 foot right of  
way, and the West line of said Lot 2;

THENCE S11°41'35"E, along the West line of said Lots 2 and 5 and  
the Easterly line of said railroad right of way, a distance of  
623.80 feet;

THENCE N89°56'E, parallel to the North line of Lots 5 and 6 and the  
South line of F. M. 1764, a distance of 644.26 feet to the place of  
beginning of the 3.0759 acre tract hereinafter described;

THENCE from said beginning corner S00°04'00"E, parallel to the West  
line of Lot 6, a distance of 449.00 feet to a 3/8" iron rod for  
corner in the South line of Lot 6, said point lying in the North  
right of way line of 9th Avenue North;

THENCE N89°56'00"E, along the South line of Lot 6 and along the  
North right of way line of 9th Avenue North, a distance of 150.00  
feet to a 3/8" iron rod for corner;

THENCE N00°04'00"W, parallel to the West line of Lot 6, a distance  
of 250.00 feet to a 3/8" iron rod for corner;

THENCE N89°56'00"E, parallel to the North line of Lot 6, a distance  
of 345.04 feet to a 3/8" iron rod for corner in the West right of  
way line of F. M. 646;

THENCE, along the West right of way line of F. M. 646, N02°44'20"W,  
7.10 feet and N06°09'42"W, 193.00 feet to a 3/8" iron rod for  
corner;

THENCE S89°56'00"W, parallel to the North line of Lot 6, a distance  
of 474.22 feet to the place of beginning.



## **SCHEDULE "B" TO SPECIAL WARRANTY DEED**

1. Any discrepancies, conflicts, or shortages in area of boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
2. Homestead or community property or survivorship rights, if any, of any spouse of any insured.
3. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
  - a. to tidelands, or lands comprising the shores or beds of navigable or perennial revisers and streams, lakes, bays, gulfs or oceans, or
  - b. to lands beyond the line of harbor or bulkhead lines as established or changed by any government, or
  - c. to filled-in lands, or artificial islands, or
  - d. to statutory water rights, including riparian rights, or
  - e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.
4. Standby fees, taxes and assessments by any taxing authority for the year 2010, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years dues to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13 Texas Tax Code, or because of improvements not assessed for a previous tax year.
5. The terms and conditions of the document creating your interest in the land.
6. The following matters and all terms of the documents creating or offering evidence of the matters:

- a. Easements and/or rights of way on or over the subject property, NOT shown by the public records that may be disclosed by a survey of subject property.
- b. Water and sewer line easement eight (8) feet in width, granted to the City of Texas City as set forth in instrument recorded in Volume 2749, Page 413 of the Office of the County Clerk of Galveston County, Texas, corrected by instrument recorded in Volume 2759, Page 293 of the Office of the County Clerk of Galveston County, Texas.
- c. All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations or mineral interest that are not listed.
- d. One-third (1/3rd) of all the oil, gas and other minerals, the royalties, bonuses, rentals and all other rights in connection with same are excepted therefrom as the same are set forth in instrument recorded in Volume 1433, Page 26, of the Office of the County Clerk of Galveston County, Texas. (Said interest not investigated subsequent to date of reservation or conveyance.)
- e. One-half (1/2) of all the oil, gas and other minerals, the royalties, bonuses, rentals and all other rights in connection with same are excepted therefrom as the same are set forth in instrument recorded in Volume 2067, Page 265, of the Office of the County Clerk of Galveston County, Texas. (Said interest not investigated subsequent to date of reservation or conveyance.)
- f. All the oil, gas and other minerals, and all other elements not considered a part of the surface estate, the royalties, bonuses, rentals and all other rights in connection with same all of which are expressly excepted therefrom and not insured hereunder, as the same are set forth in instrument recorded in Volume 2307, Page 61, of the Office of the County Clerk of Galveston County, Texas. (Said interest not investigated subsequent to date of reservation or conveyance.)
- g. The terms, conditions and stipulations of that certain Mineral Lease dated July 1, 1945, from F. H. Kohfeldt, et al, as Lessor, to Pan American Production Company, as Lessee, recorded in Volume 692, Page 234, of the Office of the County Clerk of Galveston County, Texas, amended by instrument recorded in Volume 949, Page 171 of the Office of the County Clerk of Galveston County, Texas. (The above lease not checked subsequent to date.)
- h. Amended Declaration of Pool recorded in Volume 949, Page 218 of the Office of the County Clerk of Galveston County, Texas.
- i. Declaration of Pool recorded in Volume 949, Page 349 of the Office of the County Clerk of Galveston County, Texas.
- j. Surface Use Agreement recorded in Volume 1928, Page 611 of the Office of the County Clerk of Galveston County, Texas.
- k. Building and zoning ordinances in force and effect in the City of Texas City. (Owner Policy Only)
- l. Terms and provisions of any and all leases, together with rights of Lessees thereunder.
- m. Rights of parties in possession. (This exception may be modified or deleted upon physical inspection of the property by a member of the title company.) (Owner's Policy Only)

## **EXHIBIT 4**

### **E-4**

#### **Permitted Exceptions**

1. Any discrepancies, conflicts, or shortages in area of boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
2. Homestead or community property or survivorship rights, if any, of any spouse of any insured.
3. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
  - a. to tidelands, or lands comprising the shores or beds of navigable or perennial revisers and streams, lakes, bays, gulfs or oceans, or
  - b. to lands beyond the line of harbor or bulkhead lines as established or changed by any government, or
  - c. to filled-in lands, or artificial islands, or
  - d. to statutory water rights, including riparian rights, or
  - e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.
4. Standby fees, taxes and assessments by any taxing authority for the year 2010, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years dues to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13 Texas Tax Code, or because of improvements not assessed for a previous tax year.
5. The terms and conditions of the document creating your interest in the land.
6. The following matters and all terms of the documents creating or offering evidence of the matters:

- a. Easements and/or rights of way on or over the subject property, NOT shown by the public records that may be disclosed by a survey of subject property.
- b. Water and sewer line easement eight (8) feet in width, granted to the City of Texas City as set forth in instrument recorded in Volume 2749, Page 413 of the Office of the County Clerk of Galveston County, Texas, corrected by instrument recorded in Volume 2759, Page 293 of the Office of the County Clerk of Galveston County, Texas.
- c. All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations or mineral interest that are not listed.
- d. One-third (1/3rd) of all the oil, gas and other minerals, the royalties, bonuses, rentals and all other rights in connection with same are excepted therefrom as the same are set forth in instrument recorded in Volume 1433, Page 26, of the Office of the County Clerk of Galveston County, Texas. (Said interest not investigated subsequent to date of reservation or conveyance.)
- e. One-half (1/2) of all the oil, gas and other minerals, the royalties, bonuses, rentals and all other rights in connection with same are excepted therefrom as the same are set forth in instrument recorded in Volume 2067, Page 265, of the Office of the County Clerk of Galveston County, Texas. (Said interest not investigated subsequent to date of reservation or conveyance.)
- f. All the oil, gas and other minerals, and all other elements not considered a part of the surface estate, the royalties, bonuses, rentals and all other rights in connection with same all of which are expressly excepted therefrom and not insured hereunder, as the same are set forth in instrument recorded in Volume 2307, Page 61, of the Office of the County Clerk of Galveston County, Texas. (Said interest not investigated subsequent to date of reservation or conveyance.)
- g. The terms, conditions and stipulations of that certain Mineral Lease dated July 1, 1945, from F. H. Kohfeldt, et al, as Lessor, to Pan American Production Company, as Lessee, recorded in Volume 692, Page 234, of the Office of the County Clerk of Galveston County, Texas, amended by instrument recorded in Volume 949, Page 171 of the Office of the County Clerk of Galveston County, Texas. (The above lease not checked subsequent to date.)
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- k. Building and zoning ordinances in force and effect in the City of Texas City. (Owner Policy Only)
- l. Terms and provisions of any and all leases, together with rights of Lessees thereunder.
- m. Rights of parties in possession. (This exception may be modified or deleted upon physical inspection of the property by a member of the title company.) (Owner's Policy Only)

**EXHIBIT 5**  
**Environmental Information**

1. Report – Preliminary Environmental Assessment, Bob Higgins Lincoln Mercury Dealership, Texas City, Texas, Clement, June 26, 1992
2. Report – Type "C" Preliminary Environmental Assessment, Higgins Lincoln Mercury, Inc. 910 Highway 146 North, Texas City, TX, ENTRIX, March 1994
3. Letter – Notification of Preliminary Analytical Results UST and In-ground Hydraulic Lifts Removal Activities, Texas City Lincoln-Mercury, Inc., 910 Highway 146 North, Texas City, TX, ENTRIX, September 14, 1994
4. Report – DRAFT Closure of UST, In-Ground Hydraulic Lifts, and Oil-Water Separator at Texas City Lincoln-Mercury, Inc., 911 Highway 146 North, Texas City, Texas, ENTRIX, April 1995
5. Report – Preliminary Environmental Site Assessment, Undeveloped 3.076 Acre Tract Adjacent to Texas City Lincoln-Mercury, Inc., Texas City, TX, ENTRIX, September 1995
6. Report – Phase I Environmental Site Assessment, Texas City Lincoln Mercury, 911 Highway 146 North, Texas City, TX, Tetra Tech, August 20, 2008

**PURCHASE AGREEMENT**

This Purchase Agreement ("Agreement") is dated as of the date specified in **Item 1 of the Term Sheet** ("Date of this Agreement") between the party ("Purchaser") identified as Purchaser in **Item 2 of the Term Sheet** and the party ("Seller") identified as Seller in **Item 3 of the Term Sheet**.

**ARTICLE 1. PURCHASE AND SALE**

**1.01.** Seller is the owner of that certain parcel of real property located in the City/Town of Texas City, State of Texas, which is more particularly described on **Exhibit 1** attached hereto and made a part hereof by reference ("Land"), together with all buildings, structures and improvements located thereon (collectively, the "Improvements"). The Land and Improvements are herein collectively referred to as the "Premises".

**1.02** Seller agrees to sell the Premises to Purchaser, and Purchaser agrees to purchase the Premises from Seller, upon the terms and conditions contained in this Agreement.

**ARTICLE 2. PURCHASE PRICE**

**2.01.** The purchase price ("Purchase Price") for the Premises shall be as specified in **Item 4 of the Term Sheet** and will be paid as follows:

- (a) Within one (1) Business Day after the Date of this Agreement, Purchaser shall deposit, or cause to be deposited with Title Source, Inc. at their offices located at 1450 W. Long Lake Road, Suite 400, Troy, Michigan 48098 ("Escrow Agent"), in cash, by bank cashier's check made payable to Escrow Agent or by a confirmed wire transfer of funds ("Immediately Available Funds") the Deposit as specified in **Item 5(a) of the Term Sheet**. Escrow Agent shall be directed to place the Deposit in an interest



bearing account pursuant to the escrow instructions attached hereto as **Exhibit 2** and made a part hereof by reference. The Deposit shall be applicable to the Purchase Price at Closing. In the event Purchaser has elected not to terminate this Agreement within five days after the end of the Inspection Period (hereinafter defined), the Deposit shall become nonrefundable to Purchaser except in the event of a default by Seller hereunder. For purposes of this Agreement, "Business Day" shall mean a day that is not (i) a Saturday, Sunday or (ii) a holiday as observed by the State of Texas and/or Michigan.

(b) Within at least one (1) Business Day prior to the Closing Date (hereinafter defined), Purchaser shall deposit or cause to be deposited with Escrow Agent, in Immediately Available Funds, the balance of the Purchase Price as specified in **Item 5(b) of the Term Sheet** plus Escrow Agent's estimate of Purchaser's share of closing costs, prorations and charges payable pursuant to this Agreement.

**2.02.** If Purchaser fails to perform any of its obligations under this Agreement, Seller, upon 5 days' notice to Purchaser, may terminate this Agreement and any monies paid hereunder may be retained by Seller as liquidated damages, in which latter event Seller shall have no other rights, remedies or recourse on account of Purchaser's failure to perform its obligations. If Seller fails to perform any of its obligations under this Agreement, Purchaser, upon 5 days' notice to Seller, may terminate this Agreement and Seller shall refund to Purchaser any monies paid hereunder and Purchaser shall have no other rights, remedies or recourse against Seller on account of Seller's failure to close the transaction as contemplated by this Agreement.

### **ARTICLE 3. TITLE AND DEED**

**3.01.** On the Closing Date (hereinafter defined), Seller shall convey title to the Premises subject to the Permitted Exceptions described in Section 7.02 hereof.

Seller shall deliver to Purchaser at Closing (hereinafter defined) a Special Warranty Deed ("Deed") conveying title to the Premises, with a covenant that Seller has not done or permitted to be done, prior to the Closing Date, any act or thing whatsoever whereby the title and estate conveyed, or any part thereof, are or shall be charged or encumbered, except for Permitted Exceptions (hereinafter defined) in the form attached hereto as **Exhibit 4** and made a part hereof by reference.

**3.02.** The execution and delivery of the Deed by Seller shall be deemed to be a full performance and discharge of all the terms and conditions of this Agreement to be observed or performed by Seller, except those that herein, if any, are stated expressly to survive the Closing.

### **ARTICLE 4. TAXES AND ASSESSMENTS**

**4.01.** Applicable Taxes (herein defined) shall be remitted to the collecting authorities by Seller if due and payable on or before the Closing Date and by Purchaser if due and payable thereafter. Applicable Taxes shall include (a) ad valorem real property taxes and (b) charges made for specific benefits and which are spread against all real property in a legally constituted taxing unit in the proportion that the assessed value of each parcel of property subject to such charges or assessments bears to the total assessed value of real (or real and personal) property within such taxing unit. Applicable Taxes shall be prorated as of the Closing Date on a calendar year basis on a 365-day year.

**4.02.** If the amount of Applicable Taxes is not ascertainable on the Closing Date, the total of Applicable Taxes paid for the next preceding tax period shall be used provided that the Premises are substantially unchanged. If the actual amount of Applicable Taxes subsequently payable by Purchaser differs in total from the comparable amount used at the Closing by more than \$500, Purchaser shall so notify Seller. An amended closing statement may be prepared by either party using actual tax amounts and the resulting adjustment shall be remitted by the liable party within 30 days of receipt of such amended statement.

**4.03.** Seller shall bear the expense of and remit the full amount of any special assessment affecting the Premises or any part thereof which on or before the Closing Date, (a) has become a lien against the Premises, and (b) is for improvements installed or under construction. All other special assessments upon the Premises shall be borne and remitted by Purchaser.

**4.04.** The obligations of this Article 4 shall survive the Closing.

#### **ARTICLE 5. TRANSFER, SALES TAXES, RECORDING FEES AND EXPENSES**

**5.01.** The expense and cost of recording the Deed, shall be borne and remitted by Purchaser on the Closing Date. The expense of all transfer taxes, if any, shall be borne and remitted by Purchaser on the Closing Date. Escrow fees, if any, shall be borne by Purchaser and paid on the Closing Date. Seller and Purchaser agree to complete, execute and verify, on or before the Closing Date, any tax return or tax returns required to be filed in connection with any of the foregoing taxes.

#### **ARTICLE 6. WATER AND SEWER PRORATIONS**

**6.01.** Water and sewer charges shall be prorated between Seller and Purchaser as of the day next preceding the Closing Date.

#### **ARTICLE 7. TITLE INSURANCE AND SURVEY**

**7.01.** Seller will order a title insurance binder or commitment (the "Binder") from Title Source, Inc. ("Title Company") pursuant to which the Title Company shall agree to issue to Purchaser an owner's title insurance policy. Such title policy shall (a) be in the standard form approved by the Texas Land Title Association (TLTA) with standard exceptions, (b) be in the amount of the Purchase Price, and (c) insure a good and marketable title to the Premises in accordance with Article 3 hereof. Seller shall cause a copy of the Binder to be delivered to Purchaser as soon as it is prepared. The cost of the Binder and, if applicable, the owner's title insurance policy shall be borne by Purchaser. Seller, at Purchaser's expense, shall obtain a boundary survey ("Survey") of the Property and cause such survey to be delivered to Purchaser within 30 days from the date hereof. Purchaser shall reimburse Seller for the costs of the Survey not to exceed \$500.00. The Survey shall be certified to the Seller, Purchaser and the Title Company. Any additional title endorsements and any additional survey items required by Purchaser shall be obtained by Purchaser at its expense.

**7.02.** If the Binder discloses any exceptions which are unacceptable to Purchaser (collectively referred to as "Title Objections") other than the lien of ad valorem real property taxes not yet due and payable, then Purchaser may object to such Title Objections by giving Notice (hereinafter defined) to Seller within thirty (30) days after delivery of the Binder. All standard exceptions, exceptions to title which are not objected to by Purchaser as provided for herein and exceptions set forth in **Exhibit 4** (except to the extent that they are contained in the Binder and objected to as provided herein) shall be deemed to be "Permitted Exceptions". If Seller does not remedy such objections at least five (5) days prior to the Closing Date, Purchaser may either (a) complete this purchase and accept the title Seller is able to convey with no reduction of the Purchase Price, unless such objections are encumbrances or liens for an ascertainable amount, in which case that amount shall be deducted from the Purchase Price, or (b) terminate this agreement, whereupon all moneys paid by Purchaser to Seller or the Escrow Agent hereunder shall be refunded to Purchaser ("Purchaser's Refund") and Purchaser shall deliver to Seller copies of all documents provided by Seller to it with respect to the Premises. Thereafter, neither party shall have any further obligation hereunder except any indemnification liability Purchaser may have under Article 11 hereof.

#### **ARTICLE 8. FIRE OR OTHER CASUALTY AND CONDEMNATION**

**8.01.** If between the Date of this Agreement and the Closing Date all or any part of the Premises shall be destroyed or damaged by fire or any other casualty without fault of Purchaser or shall be condemned by governmental or other lawful authority, Purchaser shall complete the purchase in which event any insurance or condemnation proceeds up to the amount of the Purchase Price, after first deducting therefrom Seller's actual expenses in obtaining such proceeds or in protecting or restoring the Premises, shall be payable to Purchaser, unless if in Purchaser's reasonable judgment the value of the Premises is substantially reduced by such casualty or condemnation. In such latter event, Purchaser may give notice to Seller within fifteen (15) days after the date of such casualty or condemnation of its termination of this Agreement whereupon Purchaser shall be entitled to the Purchaser's Refund and Purchaser shall deliver to Seller copies of all documents provided by Seller to it with respect to the Premises. Thereafter, neither party shall have any further obligation hereunder except any indemnification liability Purchaser may have under Article 11 hereof. Notwithstanding the foregoing, in the event the cost of repairing or restoring the Premises exceeds \$50,000.00, Seller shall also have the right to terminate this Agreement. In such event, Seller may give notice to Purchaser within thirty (30) days after the date of casualty or the date of condemnation of its termination of this Agreement whereupon Purchaser shall be entitled to the Purchaser's Refund, and Purchaser shall deliver to Seller copies of all documents provided by Seller to it with respect to the Premises. Thereafter, neither party shall have any further obligation hereunder except any indemnification liability Purchaser may have under Article 11 hereof.

#### **ARTICLE 9. CLOSING SPECIFICS**

**9.01.** The closing of the transactions contemplated hereby (the "Closing") shall take place in escrow through the offices of Escrow Agent located at Title Source 1450 W. Long Lake Road Suite 400 Troy, MI 48098 or at such other location as mutually agreeable by Seller and Purchaser, and shall take place not later than May 15, 2010 ("Closing Date").

**9.02.** On the Closing Date, (a) Purchaser shall deliver to Seller the Purchase Price payable as specified in Section 2.01 and (b) Seller shall deliver to Purchaser the Deed and a Non-foreign Tax Status Affidavit (Form 1445). Both Seller and Purchaser shall deliver such other documents as the title company may reasonably require or as may be required by law upon the transfer of real property in the State of Texas.

#### **ARTICLE 10. NOTICES**

**10.01.** All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified mail, postage prepaid or by prepaid overnight mail delivery service providing written evidence of delivery, addressed as specified in **Item 6(a) and 6(b) of the Term Sheet** or to such other address as either party may designate to the other by written notice. Any notice by certified mail shall be deemed to have been given on the day of certification thereof. Any notice by overnight delivery service shall be deemed to have been given on the next business day after the date deposited with a overnight delivery service addressed as aforesaid.

#### **ARTICLE 11. INSPECTION OF PREMISES**

**11.01.** Seller agrees that Purchaser and its contractors, subcontractors and their respective employees or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable (collectively, "Purchaser's Representatives") shall have the right to enter upon the Premises for a period commencing on the Date of this Agreement and expiring thirty (30) days thereafter (the "Inspection Period") to (i) inspect the Premises, including conducting a Phase I environmental site assessment; and (ii) conduct reasonable tests thereon, and to make such other examinations with respect thereto as Purchaser, or its counsel, licensed engineers, surveyors or other representatives may deem reasonably necessary; provided, however, Purchaser shall not conduct any subsurface or environmental investigations of the Premises (excepting only a non-invasive Phase I environmental assessment) without Seller's prior written consent, which consent shall not be unreasonably withheld. Any tests, examinations or inspections of the Premises by Purchaser and all costs and expenses in connection with such testing, examination and inspection of the Premises shall be at the sole cost of Purchaser, and shall be performed in a manner not to unreasonably interfere with Seller's ownership of the Premises or increase

Seller's liability with respect to Seller's ownership of the Premises. Purchaser shall maintain the confidentiality of all information derived as a result of such inspection, in accordance with Article 12.

Purchaser may engage only qualified, independent contractors, subcontractors or consultants to assist with any environmental investigation of the Premises (Phase I and/or Phase II); however, no contractual, legal or other relationship will be created between Seller and any such contractor, subcontractor or consultant as a result. This Agreement shall not create any obligation on the part of Seller to pay or to see that the payment of any sum is made to any such contractor, subcontractor or consultant.

(a) In the event Purchaser elects to perform any environmental study (such as a Phase I or Phase II environmental study) with respect to the Premises, the parties agree that:

- (i) Purchaser shall provide Seller with a copy of the proposed scope of work in connection with any such work and any and all modifications thereof, which scope of work shall be subject to the reasonable approval of Seller;
- (ii) Purchaser shall provide Seller with a verbal report of the consultant's site visit and a copy of the test data as soon as it is available;
- (iii) Purchaser shall provide Seller with copies of the report in draft form in order to review it and provide comments before such report is finalized;
- (iv) Purchaser shall provide Seller with a copy of the final reports (Phase I and/or Phase II);
- (v) Purchaser agrees that any reporting or disclosure obligation shall be performed by Seller. Seller will be notified and given the opportunity to make disclosure to any governmental agencies to the extent such disclosure is required under applicable law, and to the extent such disclosure is required under law and if Seller shall fail to do so within ten (10) days after written notice to Seller from Purchaser, Purchaser, as the case may be, shall have the right to make such disclosure to the extent required by law; and
- (vi) Purchaser shall notify Seller at least five (5) business days prior to such tests, specifying a time and date when such tests will be performed so that Seller's designee(s) may, at its option, be available during the taking of such tests and, at Seller's option and expense, Seller may take split samples of any test borings. Any tests, examinations or inspections of the Premises by Purchaser and all costs and expenses in connection with such inspection of the Premises (or any part thereof) shall be at the sole cost of Purchaser and shall be performed in a manner not to interfere with Seller's or any tenant's use of the Premises or other property owned by Seller and shall not violate any law or regulation of any governmental authority.

(b) To the extent Purchaser's inspections or tests disclose the presence of any existing contamination on the Premises in violation of applicable law, then upon becoming aware of any hazardous substance, Purchaser shall immediately cease any further testing and shall notify Seller of the existence of such hazardous substance and provide such reasonable information as Seller may request in connection therewith.

(c) Seller shall have the option, upon receiving any environmental reports performed by Purchaser to terminate its obligations pursuant to this Agreement by written notice to Purchaser whereupon Purchaser shall be entitled to Purchaser's Refund and Purchaser shall deliver to Seller copies of all documents provided by Seller to it with respect to the Premises. Thereafter, neither party shall have any further obligation hereunder, except any indemnification liability Purchaser may have under Article 11 hereof, or, at Seller's election, Seller shall cause to remediate or take such corrective action with respect to the Premises.

**11.02.** Seller agrees that within five (5) days after the Date of this Agreement, Seller will provide to Purchaser the environmental information and reports listed on **Exhibit 5** attached hereto and made a part hereof by reference (collectively, "Environmental Information"). Purchaser agrees that it will hold and utilize the Environmental Information in accordance with the terms and conditions contained in Article 12 hereof.

**11.03.** Purchaser hereby agrees to indemnify, defend and save Seller harmless from and against any and all costs, liens losses, claims, liabilities or expenses relating to personal injury or property damage, including reasonable attorneys' fees and costs, arising out of or related to Purchaser's or Purchaser's Representatives' entry upon or activities at the Premises. This indemnity shall survive the Closing Date.

**11.04. Insurance.**

(a) Notwithstanding what is set forth below, during the Inspection Period, Purchaser, who may be accompanied by Purchaser's Representatives, shall be entitled to have one (1) walkthrough of the Premises to conduct a visual inspection only of same (and not for the purpose of conducting any environmental investigation) without the requirement of providing the insurance set forth in Section 11.04(b) herein, provided that at all times during such visual inspection Purchaser and Purchaser's Representatives are accompanied by a representative of the Broker.

(b) If Purchaser wishes to enter onto the Premises at times other than as set forth in Section 11.04(a) above, then Purchaser, at its sole cost and expense, shall procure and maintain insurance as follows. If Purchaser wishes to have Purchaser's Representatives enter onto the Premises at times other than as set forth in Section 11.04(a) above, then Purchaser's Representatives shall procure and maintain insurance as follows. All such insurance shall be maintained continuously throughout the term of this Agreement from such companies as are acceptable to Seller and listed in the current "Best's Insurance Guide" as possessing a minimum policy holders rating of "A-" (Excellent) and a financial category no lower than "VI" (\$25,000,000 to \$50,000,000 of adjusted policyholders surplus). Purchaser shall indemnify and be fully responsible for any cost to Seller resulting from the failure of the Purchaser's Representatives to procure and/or maintain said insurance.

(i) **Liability Insurance**

- (A) Workers' Compensation insurance for statutory limits or a State certificate of self insurance, and employer's liability insurance for not less than \$1 million per occurrence.
- (B) Occurrence type commercial general liability insurance, including but not limited to blanket contractual coverage, for bodily injury including death, personal injury, and property damage with limits of not less than \$3 million combined single limit per occurrence.
- (C) Automobile liability insurance covering all owned, non-owned and hired vehicles, with limits of not less than \$3 million combined single limit per occurrence.
- (D) Professional Liability insurance, including but not limited coverage for Environmental Suppliers and Engineers, with limits of not less than \$2 million combined single limit per occurrence.

(ii) With the exception of Workers' Compensation, each insurance policy listed in Section 11.04(a) above, and any excess or umbrella policy carried by Purchaser with additional limits than those specified above, must name Seller as an additional insured under the policy(s). All insurance policies of the Purchaser shall be endorsed to state that the policy will be primary, and will not be excess to or contributory with, any self-insurance or insurance policies carried by Seller. The insurance policy shall provide that the policy may not be canceled or materially altered without 30 days' prior written notice to Seller. Purchaser shall furnish to Seller an acceptable certificate of insurance evidencing the coverage required herein. The furnishing of acceptable evidence of required coverage should not relieve Purchaser from any liability or obligation for which it is otherwise responsible to Seller.

(iii) **Waiver of Subrogation.**

- (A) Seller and Purchaser and/or Purchaser's Representatives, as the case may be, each hereby waive any and all rights of subrogation that their insurers may have for

recovery against the other and its parent, subsidiaries and affiliates, and their respective officers, directors, stockholders, agents, and employees, relating to losses or damage arising from performance of this Agreement.

- (B) This mutual subrogation waiver will preclude the assignment of any insurance claim by way of subrogation to any insurer. Seller and Purchaser and/or Purchaser's Representatives, as the case may be, agree to give immediately to each appropriate insurer written notice, if required, of the terms of these mutual waivers, and if necessary, have said insurance policies properly endorsed to prevent the invalidation of the insurance coverages by reason of these waivers, if required by the respective insurance policies.
- (C) Seller and Purchaser and/or Purchaser's Representatives, as the case may be, each shall indemnify the other against any loss or expense, including but not limited to reasonable attorney's fees, resulting from the failure to obtain such insurance subrogation waiver.

**11.05.** All activities undertaken by Purchaser or Purchaser's Representatives on the Premises during the Inspection Period shall fully comply with all applicable laws, rules and regulations of all governmental and quasi-governmental authorities, including laws relating to worker safety and to proper disposal of any samples taken from the Premises. Purchaser shall be solely responsible for the off-site disposal of any samples taken or waste associated therewith.

**11.06.** Purchaser and Purchaser's Representatives hereby understand and agree that they shall enter upon the Premises at their own risk. Seller shall have no duty to inspect the Premises and shall have no duty to warn any person of any latent or patent defect, condition or risk that may exist on the Premises or that might be incurred in the exercise of the rights granted herein.

**11.07.** If, after completing such inspection, Purchaser is not satisfied with the Premises for any reason, then Purchaser may terminate this Agreement by giving written notice to Seller within 5 days after expiration of the Inspection Period whereupon Purchaser shall be entitled to the Purchaser's Refund and Purchaser shall deliver to Seller copies of all documents provided by Seller to it with respect to the Premises. Thereafter, neither party shall have any further obligation hereunder except any indemnification liability Purchaser may have under Article 11 hereof. If Purchaser does not purchase the Premises for any reason, Purchaser, at its expense, shall restore the Premises to substantially the same condition as existed immediately prior to any changes made by Purchaser and shall provide Seller with a copy of any environmental inspection reports it received in connection with the Premises prepared by independent third parties on behalf of Purchaser.

**11.08.** Upon the closing of this transaction, Purchaser shall be deemed to represent that it has inspected the Premises and knows the condition thereof and that it is accepting the same in its present "As Is" condition with all defects and faults. Purchaser further acknowledges that neither Seller nor any agent, employee or representative of Seller or any other person purporting to represent Seller has made, and Purchaser has not been induced by nor relied upon, any statement, warranty or representation, whether express or implied, as to the environmental and physical condition of the Premises or the adequacy of any environmental assessment reports that Seller may have provided to Purchaser with respect to the Premises. Seller makes no representation as to the fitness of the Premises for any particular purposes. Purchaser acknowledges that in making its decision to enter into this Agreement it has relied on its own investigation of the physical and environmental condition of the Premises.

(a) Without limiting the generality of the foregoing, Purchaser hereby expressly waives, releases and relinquishes any and all claims, causes of action, rights and remedies Purchaser may now or hereafter have against Seller, and its affiliates, and subsidiaries and their respective directors, officers, attorneys, employees, shareholders and agents of Seller, whether known or unknown ("Claims") with respect to (i) any past, present or future presence or existence of Hazardous Materials on, under or about the Premises, or with respect to (ii) any past, present or future violation of any rules, regulations or laws, now or hereafter enacted, regulating or governing the use, handling, storage, release or disposal of Hazardous Materials, including, without limitation, (x) any and all rights Purchaser may now or hereafter have to seek contribution from Seller under Section 113(f)(i) of the Comprehensive Environmental Response, Compensation and Liability

Act of 1980 ("CERCLA"), as amended by the Superfund Amendment and Reauthorization Act of 1986 (42 U.S.C.A. Section 9613) (or any similar state or local law), as the same may be further amended or replaced by any similar law, rule or regulation, (y) any and all claims, whether known or unknown, now or hereafter existing, with respect to the Premises under Section 107 of CERCLA (42 U.S.C.A. Section 9607)(or any similar state or local law), as the same may be further amended or replaced by any similar law, rule or regulation and (z) any and all claims, whether known or unknown, based on nuisance, trespass or any other common law or statutory provisions. As used herein, the term "Hazardous Materials" includes, without limitation, any hazardous or toxic materials, substances or wastes: (1) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action policy or common law, or (2) which is or becomes defined as a "hazardous waste", "hazardous substance", "pollutant" or "contaminant" under any federal, state, or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, CERCLA and/or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.); or (3) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State where the Premises are located, or any political subdivision thereof; or (4) the presence of which on the Premises causes or threatens to cause a nuisance upon the Premises to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Premises; or (5) without limitation which contains gasoline, PCBs, asbestos, diesel fuel or other petroleum hydrocarbons.

(b) Purchaser shall indemnify, defend and hold Seller harmless from and against, all losses, costs, actions fines, claims, fees, disbursements, liabilities, damages and expenses (including, but not limited to reasonable attorney fees and costs incurred in the investigation, defense and settlement of claims) that Seller may suffer or incur as a result of or in connection in any way with: (i) the violation of any environmental laws as relates to the Premises (no matter when or by whom such violation was caused); (ii) any site investigation, report and/or remediation measures taken, prepared or required in respect of the Premises, or any other property, as a result of any Hazardous Materials or alleged Hazardous Materials on the Premises, or which emanated from the Premises (no matter when or by whom caused); or (iii) a claim of any description whatsoever made by a third party which arises directly or indirectly as a result of any Hazardous Materials or alleged Hazardous Materials on the Premises, or which emanated from the Premises (no matter when or by whom caused).

(c) The waivers, releases and indemnification by Purchaser herein contained shall survive the Closing Date indefinitely and the recordation of the Deed indefinitely.

## **ARTICLE 12. CONFIDENTIALITY**

**12.01.** Purchaser shall not disclose any of the terms or provisions of this Agreement prior to the Closing Date to any person or entity not a party to this Agreement, nor shall Purchaser issue any press releases or make any public statements relating to this Agreement or Purchaser's intended use of the Premises. Further, Purchaser shall keep all materials provided or made available to Purchaser by Seller, and all materials generated by Purchaser in the course of conducting any due diligence activities relating to the Premises, whether obtained through documents, oral or written communications, or otherwise (collectively, the "Information"), in accordance with the following terms and conditions:

(a) Purchaser acknowledges that the Information is proprietary and confidential and belongs to Seller. Purchaser agrees that it shall keep confidential, for as long as Seller remains owner of the Premises, all of the Information furnished to Purchaser by Seller. Purchaser recognizes the competitive value and confidential and sensitive nature of the Information and the damage that could result to Seller if it is misused by Purchaser or disclosed to any third party.

(b) The Information acquired by Purchaser from Seller under this Agreement shall not be utilized in any manner, without Seller's prior written consent, except for the purpose of evaluating the Premises and the Agreement.

(c) Purchaser may provide the Information to its directors, officers, employees, agents, legal counsel, consultants or lenders (collectively, "Agents"), to the extent that such Agents needs to know the Information

to evaluate the Premises, and provided that, before receiving the Information, each Agent has executed a confidentiality agreement with Purchaser which requires Agent to keep the Information confidential in the same manner and to the same extent as Purchaser is required to do under this Agreement. Purchaser shall provide Seller with a list of all Agents and a copy of the confidentiality agreements executed by any such Agent prior to releasing such Information to any such Agent.

(d) Purchaser shall at all times ensure, require and enforce full compliance with the provisions of the Agreement by each and every Agent of Purchaser.

(e) Without Seller's prior written consent, neither Purchaser nor its Agents will disclose to any person the fact that the Information has been made available, that discussions, negotiations, and/or investigations are taking place concerning the purchase the Premises, or any of the terms, conditions or other facts with respect to any possible transaction, including the status thereof.

(f) If Purchaser does not purchase the Premises or if Seller so requests in writing, Purchaser shall promptly return to Seller all tangible copies of the Information, in whatever form, including any photocopies made by Purchaser of any of the Information obtained under this Agreement.

(g) This Agreement does not apply to any portion of the Information which is generally available to the public other than as a result of disclosure by Purchaser or its Agents.

(h) No inspections or investigations of the Premises shall be conducted, and no communications of any nature regarding the Premises shall be held with governmental agencies pertaining to the environmental condition of the Premises, without the prior written consent of Seller.

(i) If Purchaser, or any of its Agents, believes it is legally compelled to disclose any of the Information to a governmental entity or other person not authorized to receive the Information under this Agreement, Purchaser or its Agents shall immediately notify Seller so that Seller may seek a protective order or other appropriate remedy and/or waive compliance with this Agreement before release of such Information. If such protective order or other remedy is not obtained or a waiver is granted, Purchaser and its Agents shall only reveal that portion of the Information which Purchaser is advised in writing by its legal counsel is legally required to be disclosed and Purchaser will exercise its best efforts to obtain assurance that the Information so revealed will be treated as confidential.

(j) Purchaser will indemnify and hold harmless Seller, its directors, officers, and employees from any claims, damages, liabilities, losses and expenses arising from Purchaser's or its Purchaser's Agents' breach of Article 12 of this Agreement.

### **ARTICLE 13. REPRESENTATIONS**

**13.01.** Seller represents to Purchaser that the facts recited below are true and accurate as of the Date of this Agreement and will be true and accurate on the Closing Date. If, prior to the Closing Date, Seller discovers that one or more of such facts are untrue or inaccurate, it will inform Purchaser in writing of its discovery. Such representations of Seller shall survive the Closing Date except to the extent that Seller gives Purchaser written notice prior to the Closing Date of the falsity or inaccuracy of any representation, or Purchaser otherwise obtains actual knowledge prior to the Closing Date of the falsity or inaccuracy of any representation or warranty, and Purchaser nevertheless elects to close this transaction. In accordance with the immediately preceding sentences, Seller represents to Purchaser as follows:

(a) Seller has received no written notice of any violations of any federal, state, county or municipal law, ordinance, order regulation or requirement affecting the Premises.

(b) Seller has not received any written notice of any existing or threatened condemnation or other legal action of any kind involving the Premises.

(c) Neither the execution nor delivery of this Agreement nor Seller's performance hereof are restricted by or violate any contractual or other obligations of the Seller.



(d) Seller is not in the hands of a receiver nor is an application for such a receiver pending; Seller has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy.

**13.02.** Purchaser represents to Seller that the facts recited below are true and accurate as of the date of this Agreement and will be true and accurate on the Closing Date. If, prior to the Closing Date, Purchaser discovers that one or more of such facts are untrue or inaccurate, it will inform Seller in writing of its discovery. Such representations of Purchaser shall survive the Closing Date except to the extent that Purchaser gives Seller written notice prior to the Closing Date of the falsity or inaccuracy of any representation, or Seller otherwise obtains actual knowledge prior to the Closing Date of the falsity or inaccuracy of any representation or warranty, and Seller nevertheless elects to close this transaction. In accordance with the immediately preceding sentences, Purchaser represents to Seller as follows:

(a) Purchaser has full power and right to enter into and perform this Agreement and to purchase the Premises as herein provided.

(b) Purchaser is not in the hands of a receiver nor is an application for such a receiver pending; Purchaser has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy.

(c) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary acts of Purchaser.

#### **ARTICLE 14. BROKERAGE**

**14.01.** If any person or entity shall assert a claim to a fee, commission or other compensation on account of alleged employment as a broker or finder or for performance of services as a broker or finder in connection with this Agreement other than stated in **Item 7 of the Term Sheet**, whose fee or commission shall be borne by Seller according to a separate agreement, the party through whom such broker or finder is claiming shall (a) indemnify, defend and hold harmless the other against and from any such claim and all costs, expenses and liabilities incurred in connection with such claim or any action or proceeding brought thereon (including, without limitation, attorney and witness fees in defending against such claim) and (b) satisfy promptly any settlement or judgment arising from any such claim or any action or proceeding brought thereon. The obligations of this Article 14 shall survive the Closing.

#### **ARTICLE 15. COOPERATION**

**15.01.** Each party hereto agrees to cooperate with the other party for purposes of effecting and structuring in conjunction with the sale of the Premises a like exchange of real property, whether simultaneous or a deferred exchanged, pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder. Each party specifically agrees to execute such documents and instruments as may be reasonably necessary to implement such exchange. The party implementing such transaction shall be solely responsible for ensuring that the structure of any such transaction is effective for such party's purpose. Notwithstanding anything to the contrary herein, neither party shall be required to take title to any replacement property, and in no event shall either party's failure to effect any exchange transaction delay the Closing of this transaction otherwise contemplated by this Agreement.

#### **ARTICLE 16. CONDITIONS TO SELLER'S OBLIGATION TO CLOSE**

**16.01.** Intentionally deleted.

#### **ARTICLE 17. MISCELLANEOUS PROVISIONS**

**17.01.** This Agreement may not be assigned or transferred by Purchaser without the express written approval of Seller.

**17.02.** This instrument contains the entire agreement between Seller and Purchaser, and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, concerning the transaction contemplated hereunder. This Agreement shall inure to the benefit of and bind the parties hereto and their respective personal representatives, successors and assigns. The headings to the articles and sections hereof are for convenience of reference only and shall in no way expand, modify, restrict or limit any provision hereof or be used to construe any such provision. This Agreement shall be governed by the laws of the State of Texas. If one or more provisions of this Agreement shall be held by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Agreement shall not be affected thereby. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto. This Agreement and any documents required to be executed by the parties hereunder may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Time is hereby expressly made of the essence of this Agreement.

#### **ARTICLE 18. TERM SHEET; INTEGRATION OF DOCUMENTS; EXECUTION**

**18.01.** This Agreement consists of this Agreement, the Term Sheet, Exhibit 1, Exhibit 2, Exhibit 3, Exhibit 4, and Exhibit 5, all of which shall constitute a single agreement.