

# AGREEMENT OF PURCHASE AND SALE

\_\_\_\_\_, Houston, Texas \_\_\_\_\_

This Agreement of Purchase and Sale ("Agreement") is made and entered into by and between Purchaser and Seller.

## RECITALS

- A. Defined terms are indicated by initial capital letters. Defined terms shall have the meaning set forth herein, whether or not such terms are used before or after the definitions are set forth.
- B. Purchaser desires to purchase the Property and Seller desires to sell the Property, all upon the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual terms, provisions, covenants and agreements set forth herein, as well as the sums to be paid by Purchaser to Seller, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Purchaser and Seller agree as follows:

## ARTICLE 1 - Basic Information

**1.1 Certain Basic Terms.** The following defined terms shall have the meanings set forth below:

- 1.1.1** Seller: ABC, Ltd.,  
a Texas limited partnership
- 1.1.2** Purchaser: DEF, Trustee
- 1.1.3** Purchase Price: \$4,000,000.00
- 1.1.4** Earnest Money: \$100,000.00 (the "Initial Earnest Money"), including interest thereon, to be deposited in accordance with Section 3.1 below, to be increased by \$100,000.00 (each \$100,000.00 increase in the Earnest Money is referred to as an "Additional Earnest Money Deposit" and all Additional Earnest Money Deposits are collectively referred to as the "Additional Earnest Money") for each thirty (30) day extension of the Closing Date as limited and as detailed in Section 7.1. The Initial Earnest Money and the Additional Earnest Money are collectively referred to as the "Earnest Money".
- 1.1.5** Title Company: Chicago Title Insurance Company  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
Houston, TX \_\_\_\_\_  
Telephone: 713-~~ZZZ~~-~~ZZZZ~~  
Facsimile: 713-~~ZZZ~~-~~ZZZZ~~

- 1.1.6**            Broker:            XYZ Brokerage Services
- 1.1.7**            Effective Date: The date on which this Agreement is executed by the latter to sign of Purchaser or Seller, as indicated on the signature page of this Agreement.
- 1.1.8**            Property Information Delivery Date: The date which is fifteen (15) days after the Effective Date.
- 1.1.9**            Title Commitment Delivery Date: The date which is fifteen (15) days after the Effective Date.
- 1.1.10**          Title and Survey Review Period: The period ending fifteen (15) days after Purchaser's receipt of the initial Title Commitment, but in any event not later than the expiration of the Inspection Period.
- 1.1.11**          Inspection Period: The period beginning on the Effective Date and ending forty-five (45) days after the Effective Date.
- 1.1.12**          Closing Date: The date which is thirty (30) days after the expiration of the Inspection Period (as the Closing Date may be extended pursuant to Section 7.1).

**1.2 Closing Costs.** Closing costs shall be allocated and paid as follows:

<b>Cost</b>	<b>Responsible Party</b>
Title Commitment required to be delivered pursuant to <u>Section 5.1</u>	Seller
Premium for standard form Title Policy required to be delivered pursuant to <u>Section 5.4</u>	Seller
Premium for any upgrade of Title Policy for extended or additional coverage and any endorsements desired by Purchaser, any inspection fee charged by the Title Company, tax certificates, municipal and utility lien certificates, and any other Title Company charges	Purchaser
Costs of Survey and/or any revisions, modifications or recertifications thereto	Purchaser
Costs for UCC Searches	Purchaser
Recording Fees	Purchaser
Any deed taxes, documentary stamps, transfer taxes, intangible taxes, mortgage taxes or other similar taxes, fees or assessments	Purchaser
Any escrow fee charged by Title Company for holding the Earnest Money or conducting the Closing	Purchaser ½ Seller ½
Real Estate Sales Commission to Broker	Seller
All other closing costs, expenses, charges and fees	Purchaser

**1.3 Notice Addresses:**

Purchaser: DEF, Trustee  
Houston, TX \_\_\_\_\_  
Ph: 713.ZZZ.ZZZZ  
Fax: 713.ZZZ.ZZZZ

with copy to: The Law Firm, P.L.L.C.  
Attention:  
Houston Land, TX \_\_\_\_\_  
Ph: ZZZ-ZZZ-ZZZZ

Seller: ABC, Ltd.  
Attention: \_\_\_\_\_  
Houston, TX \_\_\_\_\_  
Ph: ZZZ.ZZZ.ZZZZ  
Fax: ZZZ.ZZZ.ZZZZ

with copy to: Haynes and Boone, L.L.P.  
Attention: Thomas J. McCaffrey  
1221 McKinney Street, Suite 2100  
Houston, TX 77010  
Ph: 713.547.2107  
Fax: 713.236.5661

**1.4 Index of Certain Additional Defined Terms:**

Additional Property Information..... Section 4.2  
Assignment ..... Subsection 7.3.2  
Casualty Notice..... Section 6.2  
CERCLA..... Section 11.2  
Closing..... Section 7.1  
Deed..... Subsection 7.3.1  
Due Diligence Termination Notice..... Section 4.4  
Hazardous Materials ..... Section 11.4  
Improvements ..... Subsection 2.1.1  
Independent Consideration ..... Section 3.2  
Intangible Personal Property..... Subsection 2.1.4  
Land..... Subsection 2.1.1  
Lease Option..... Section 2.2  
Material Damage..... Subsection 6.2.1  
Operating Statements..... Subsection 4.1.1  
Permitted Exceptions ..... Section 5.3  
Permitted Outside Parties..... Section 4.7  
Property..... Section 2.1  
Property Documents ..... Section 4.4  
Property Information..... Section 4.1  
Real Property ..... Subsection 2.1.1

<u>Reports</u> .....	Section 4.5
<u>Service Contracts</u> .....	Subsection 2.1.4
<u>Survey</u> .....	Section 5.2
<u>Survival Period</u> .....	Section 9.3
<u>Tangible Personal Property</u> .....	Subsection 2.1.3
<u>Taxes</u> .....	Section 8.1
<u>Title Commitment</u> .....	Section 5.1
<u>Title Policy</u> .....	Section 5.4

**ARTICLE 2 - Property**

**2.1** Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the following property (collectively, the “Property”):

**2.1.1 Real Property.** The land described in Exhibit A attached hereto (the “Land”), together with (i) all improvements located thereon (“Improvements”), (ii) all and singular the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon or in anywise appertaining thereto, and (iii) without warranty, all right, title, and interest of Seller, if any, in and to all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, adjoining such Land (collectively, the “Real Property”).

**2.1.2 Leases.** Unless Seller exercises its Lease Option set forth in Section 2.2, there shall be no leases of the Real Property in effect as of the Closing.

**2.1.3 Tangible Personal Property.** All of Seller’s right, title and interest, without warranty, in the equipment, machinery, furniture, furnishings, supplies and other tangible personal property, if any, owned by Seller and now or hereafter located in and used in connection with the operation, ownership or management of the Real Property, but specifically excluding any items of personal property owned by tenants at or on the Real Property and further excluding any items of personal property owned by third parties and leased to Seller (collectively, the “Tangible Personal Property”).

**2.1.4 Intangible Personal Property.** All of Seller’s right, title and interest, if any, without warranty, in the following intangible personal property related to the Real Property and the Improvements: (i) the plans and specifications and other architectural and engineering drawings for the Improvements, if any (to the extent assignable without cost to Seller); (ii) contract rights related to the operation, ownership or management of the Real Property, including maintenance, service, construction, supply and equipment rental contracts, if any, (collectively, the “Service Contracts”) (but only to the extent assignable without cost to Seller and Seller’s obligations thereunder are expressly assumed by Purchaser pursuant to this Agreement); and (iii) warranties (to the extent assignable without cost to Seller) (all of the items described in (i)-(iii) of this sentence are collectively referred to as the “Intangible Personal Property”). It is agreed that Intangible Personal Property shall not include: (i) any trade names or trade marks associated with the Real Property and the Improvements, including Seller’s rights and interests, if any, in the name of the Real Property; or (ii) governmental permits, approvals and licenses; or (iii) telephone exchange numbers.

**2.2** Seller shall have the right (“Lease Option”) to lease the Property from Purchaser for a period of up to six (6) months commencing on the Closing Date at a lease rate of \$25,000 per month (Seller being responsible for all utilities). If Purchaser desires to exercise the Lease Option, on the Closing Date, the parties shall execute a lease agreement in form satisfactory to Purchaser and Seller, naming Seller as Tenant, and Purchaser as Landlord, providing for the Tenant to pay the Landlord a

prorated portion of the annual property taxes and utilities to Landlord as additional rent, containing the terms herein relating to renewal and term of the lease, and containing such other provisions as the parties may agree. If Purchaser desires to exercise the Lease Option, it shall give notice to Purchaser of such fact at least seven (7) days prior to the Closing Date; provided, however, if Purchaser elects to extend the Closing Date pursuant to Section 7.1, then Seller shall have the right to rescind its Lease Option and/or to give another notice of its election to exercise its Lease Option (which rights may be exercised by Seller each time Purchaser exercises its rights under Section 7.1) for a different period (so long as such period is six [6] months or less commencing from the date of the Closing Date, as revised, and so long as the same is delivered at least seven [7] days prior to the revised Closing Date).

### **ARTICLE 3 - Earnest Money**

**3.1 Deposit and Investment of Initial Earnest Money.** Within three (3) business days after the Effective Date, Purchaser shall deposit the Initial Earnest Money with Title Company. Title Company shall invest the Initial Earnest Money in government insured interest-bearing accounts satisfactory to Seller and Purchaser, shall not commingle the Initial Earnest Money with any funds of Title Company or others, and shall promptly provide Purchaser and Seller with confirmation of the investments made. Such account shall have no penalty for early withdrawal, and Purchaser accepts all risks with regard to such account.

**3.2 Independent Consideration.** Simultaneously with the delivery of the Initial Earnest Money to the Title Company by the Purchaser, Purchaser shall pay to Seller One Hundred and No/100 Dollars (\$100.00) as independent consideration for Seller's performance under this Agreement ("Independent Consideration"), which shall be retained by Seller in all instances, and shall not be applied against the Purchase Price.

**3.3 Form; Failure to Deposit.** The Initial Earnest Money and Independent Consideration shall be in the form of a certified or cashier's check or the wire transfer to Title Company of immediately available U.S. federal funds. If Purchaser fails to timely deposit any portion of the Initial Earnest Money or the Independent Consideration within the time periods required, Seller may terminate this Agreement by written notice to Purchaser, and thereafter the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof.

**3.4 Disposition of Initial Earnest Money.** The Initial Earnest Money shall be released to Seller at the expiration of the Inspection Period and shall be applied as a credit to the Purchase Price at Closing. The Additional Earnest Money shall also be applied as a credit to the Purchase Price at Closing if Closing occurs. If Purchaser elects to terminate this Agreement prior to the expiration of the Inspection Period pursuant to Section 4.4, Title Company shall pay the entire Initial Earnest Money to Purchaser one (1) business day following receipt of the Due Diligence Termination Notice from Purchaser (as long as the current investment can be liquidated and disbursed in one business day). No notice to Title Company from Seller shall be required for the release of the Initial Earnest Money to Purchaser by Title Company if Purchaser terminates this Agreement pursuant to Section 4.4. In the event of a termination of this Agreement by either Seller or Purchaser for any reason other than pursuant to Section 4.4, Title Company is authorized to deliver the Initial Earnest Money to the party hereto entitled to same pursuant to the terms hereof on or before the tenth (10th) business day following receipt by Title Company and the non-terminating party of written notice of such termination from the terminating party, unless the other party hereto notifies Title Company that it disputes the right of the other party to receive the Initial Earnest Money. In such event, Title Company may interplead the Initial Earnest Money into a court of competent jurisdiction in the county in which the Initial Earnest Money has been deposited. All attorneys' fees and costs and Title Company's costs and expenses incurred in connection with such

interpleader shall be assessed against the party that is not awarded the Initial Earnest Money, or if the Initial Earnest Money is distributed in part to both parties, then in the inverse proportion of such distribution.

#### **ARTICLE 4 - Due Diligence**

**4.1 Due Diligence Materials To Be Delivered.** To the extent such items are in Seller's possession, Seller shall deliver to Purchaser the following (the "Property Information") on or before the Property Information Delivery Date:

**4.1.1 Financial Information.** Copies of utility statements and a summary of capital expenditures pertaining to the Property for the twelve (12) months preceding the Effective Date of this Agreement ("Operating Statements");

**4.1.2 Environmental Reports.** Copy of any environmental reports or site assessments related to the Property prepared for the benefit of Seller;

**4.1.3 Tax Statements.** Copy of ad valorem tax statements relating to the Property for 2004;

**4.1.4 Survey.** Copy of Seller's most current survey of the Property;

**4.1.5 Service Contracts.** A list, together with copies, of Service Contracts; and

**4.1.6 Personal Property.** A list of Tangible Personal Property.

**4.2 Due Diligence Materials To Be Made Available.** To the extent such items are in Seller's possession, Seller shall make available to Purchaser for Purchaser's review, at the offices of Seller, the following items and information (the "Additional Property Information") on or before the Property Information Delivery Date, and Purchaser at its expense shall have the right to make copies of same:

**4.2.1 Licenses, Permits and Certificates of Occupancy.** Licenses, permits and certificates of occupancy relating to the Property.

**4.2.2 Maintenance Records and Warranties.** Maintenance work orders for the twelve (12) months preceding the Effective Date of this Agreement and warranties, if any, on roofs, air conditioning units, fixtures and equipment; and

**4.2.3 Plans and Specifications.** Building plans and specifications relating to the Property.

**4.3 Physical Due Diligence.** Commencing on the Effective Date and continuing until the Closing, Purchaser shall have reasonable access to the Property at all reasonable times during normal business hours, for the purpose of conducting reasonably necessary tests, including surveys and architectural, engineering, geotechnical and environmental inspections and tests, provided that (i) Purchaser must give Seller twenty-four (24) hours' prior telephone or written notice of any such inspection or test, and with respect to any intrusive inspection or test (i.e., core sampling) must obtain Seller's prior written consent (which consent may be given, withheld or conditioned in Seller's sole discretion), (ii) prior to performing any inspection or test, Purchaser must deliver a certificate of insurance

to Seller evidencing that Purchaser and its contractors, agents and representatives have in place reasonable amounts of commercial general liability insurance and workers compensation insurance for its activities on the Property in terms and amounts reasonably satisfactory to Seller covering any accident arising in connection with the presence of Purchaser, its contractors, agents and representatives on the Property, which insurance shall name Seller as an additional insured thereunder, and (iii) all such tests shall be conducted by Purchaser in compliance with Purchaser's responsibilities set forth in Section 4.11 below. Purchaser shall bear the cost of all such inspections or tests and shall be responsible for and act as the generator with respect to any wastes generated by those tests, including signing any required manifests. Subject to the provisions of Section 4.7 hereof, Purchaser or Purchaser's representatives may meet with any governmental authority for any good faith, reasonable purpose in connection with the transaction contemplated by this Agreement; provided, however, Purchaser must contact Seller at least forty-eight (48) hours in advance by telephone or fax to inform Seller of Purchaser's intended meeting and to allow Seller the opportunity to attend such meeting if Seller desires.

**4.4 Due Diligence/Termination Right.** Purchaser shall have through the last day of the Inspection Period in which to (i) examine, inspect, and investigate the Property Information and the Additional Property Information (collectively, the "Property Documents") and the Property and, in Purchaser's sole and absolute judgment and discretion, determine whether the Property is acceptable to Purchaser, (ii) obtain all necessary internal approvals, and (iii) satisfy all other contingencies of Purchaser. Notwithstanding anything to the contrary in this Agreement, Purchaser may terminate this Agreement for any reason or no reason by giving written notice of termination to Seller and Title Company (the "Due Diligence Termination Notice") on or before the last day of the Inspection Period. If Purchaser does not give a Due Diligence Termination Notice, this Agreement shall continue in full force and effect, Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 4.4, and Purchaser shall be deemed to have acknowledged that it has received or had access to all Property Documents and conducted all inspections and tests of the Property that it considers important.

**4.5 Return of Documents and Reports.** If this Agreement terminates for any reason other than Seller's default hereunder, Purchaser shall promptly return and/or deliver to Seller all Property Documents and copies thereof. Additionally, if this Agreement terminates for any reason other than Seller's default, then Purchaser must deliver to Seller copies of all third party reports, investigations and studies, other than economic analyses (collectively, the "Reports" and, individually, a "Report") prepared for Purchaser in connection with its due diligence review of the Property. The Reports shall be delivered to Seller without any representation or warranty as to the completeness or accuracy of the Reports or any other matter relating thereto, and Seller shall have no right to rely on any Report without the written consent of the party preparing same. Purchaser's obligation to deliver the Property Documents and the Reports to Seller shall survive the termination of this Agreement.

**4.6 Service Contracts.** On or prior to the last day of the Inspection Period, Purchaser will advise Seller in writing of which Service Contracts it will assume and for which Service Contracts Purchaser requests that Seller deliver written termination at or prior to Closing, provided Seller shall have no obligation to terminate, and Purchaser shall be obligated to assume, any Service Contracts which by their terms cannot be terminated without penalty or payment of a fee. Seller shall deliver at Closing notices of termination of all Service Contracts that are not so assumed. Purchaser must assume the obligations arising from and after the Closing Date under those Service Contracts (i) that Purchaser has agreed to assume, or that Purchaser is obligated to assume pursuant to this Section 4.6, and (ii) for which a termination notice is delivered as of or prior to Closing but for which termination is not effective until after Closing.

**4.7 Proprietary Information; Confidentiality.** Purchaser acknowledges that the Property Documents are proprietary and confidential and will be delivered to Purchaser solely to assist Purchaser in determining the feasibility of purchasing the Property. Purchaser shall not use the Property Documents for any purpose other than as set forth in the preceding sentence. Purchaser shall not disclose the contents to any person other than to those persons who are responsible for determining the feasibility of Purchaser's acquisition of the Property and who have agreed to preserve the confidentiality of such information as required hereby (collectively, "Permitted Outside Parties"); provided, however, Purchaser shall disclose only such information to a particular Permitted Outside Party as is reasonably necessary for that Permitted Outside Party to perform its role in assisting Purchaser determine the feasibility of its acquisition of the Property, and nothing more. At any time and from time to time, within two (2) business days after Seller's request, Purchaser shall deliver to Seller a list of all parties to whom Purchaser has provided any Property Documents or any information taken from the Property Documents. Purchaser shall not divulge the contents of the Property Documents and other information except in strict accordance with the confidentiality standards set forth in this Section 4.7. In permitting Purchaser to review the Property Documents or any other information, Seller has not waived any privilege or claim of confidentiality with respect thereto, and no third party benefits or relationships of any kind, either express or implied, have been offered, intended or created.

**4.8 No Representation or Warranty by Seller.** Purchaser acknowledges that, except as expressly set forth in this Agreement, Seller has not made nor makes any warranty or representation regarding the truth, accuracy or completeness of the Property Documents or the source(s) thereof. Purchaser further acknowledges that some if not all of the Property Documents were prepared by third parties other than Seller. Seller expressly disclaims any and all liability for representations or warranties, express or implied, statements of fact and other matters contained in such information, or for omissions from the Property Documents, or in any other written or oral communications transmitted or made available to Purchaser. Purchaser shall rely solely upon its own investigation with respect to the Property, including, without limitation, the Property's physical, environmental or economic condition, compliance or lack of compliance with any ordinance, order, permit or regulation or any other attribute or matter relating thereto. Seller has not undertaken any independent investigation as to the truth, accuracy or completeness of the Property Documents and are providing the Property Documents solely as an accommodation to Purchaser.

**4.9 Purchaser's Responsibilities.** In conducting any inspections, investigations or tests of the Property and/or Property Documents, Purchaser and its agents and representatives shall: (i) not disturb the tenants or interfere with their use of the Property pursuant to their respective leases; (ii) not interfere with the operation and maintenance of the Property; (iii) not damage any part of the Property or any personal property owned or held by any tenant or any third party; (iv) not injure or otherwise cause bodily harm to Seller or its respective agents, guests, invitees, contractors and employees or any tenants or their guests or invitees; (v) comply with all applicable laws; (vi) promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Property; (vii) not permit any liens to attach to the Real Property by reason of the exercise of its rights hereunder; (viii) repair any damage to the Real Property resulting directly or indirectly from any such inspection or tests; and (ix) not reveal or disclose prior to Closing any information obtained during the Inspection Period concerning the Property and the Property Documents to anyone other than the Permitted Outside Parties, in accordance with the confidentiality standards set forth in Section 4.7 above, or except as may be otherwise required by law.

**4.10 Purchaser's Agreement to Indemnify.** Purchaser indemnifies and holds Seller harmless from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including reasonable attorneys' fees) arising out of Purchaser's inspections or tests permitted under this Agreement or any violation of the provisions of Sections 4.3, 4.7 and 4.9; provided, however, the indemnity shall not extend to protect Seller from any pre-existing liabilities for matters merely discovered



by Purchaser (i.e., latent environmental contamination) so long as Purchaser's actions do not aggravate any pre-existing liability of Seller. Purchaser also indemnifies and holds any tenant harmless from and against any and all claims, causes of action, damages, liabilities and expenses which such tenant may suffer or incur due to Purchaser's breach of its obligation under Section 4.7 above to maintain the confidential nature of any Property Documents or other information relative to such tenant. Purchaser's obligations under this Section 4.10 shall survive the termination of this Agreement and shall survive the Closing.

**4.11 Environmental Studies; Seller's Right to Terminate.** As additional consideration for the transaction contemplated in this Agreement, Purchaser must provide to Seller, immediately following the receipt of same by Purchaser, copies of any and all reports, tests or studies involving contamination of or other environmental concerns relating to the Property; provided, however, Purchaser shall have no obligation to cause any such tests or studies to be performed on the Property. Seller acknowledges that Purchaser has not made and does not make any warranty or representation regarding the truth or accuracy of any such studies or reports. Notwithstanding Section 4.10 above, Purchaser shall have no liability or culpability of any nature as a result of having provided such information to Seller or as a result of Seller's reliance thereon or arising out of the fact that Purchaser merely conducted such tests or studies, so long as Purchaser's actions do not aggravate any pre-existing liability of Seller. If such reports, tests or studies indicate the existence or reasonable potential existence of any contamination of any portion of the Property that is not disclosed in the Property Documents and that is material (meaning that the reasonably estimated cost of remediation and/or other liability associated therewith, as determined by Seller's environmental consultants, exceeds \$50,000.00), then Seller may terminate this Agreement by giving written notice to Purchaser within ten (10) business days after Purchaser has provided Seller with copies of such reports, tests or studies, whereupon the Initial Earnest Money shall be returned to Purchaser, the parties shall have no further obligations hereunder except for obligations that expressly survive the termination hereof, and Seller shall pay to Purchaser an amount equal to the lesser of (A) Purchaser's actual out-of-pocket expenditures incurred directly in connection with negotiating this Agreement and/or conducting due diligence activities contemplated hereunder, or (B) Five Thousand and No/100 Dollars (\$5,000.00), provided, however, that Purchaser must make written demand of Seller for such reimbursement and provide Seller reasonable supporting documentation of actual expenditures within thirty (30) days of the termination of this Agreement, and if Purchaser fails to provide such written demand and supporting documentation within such thirty (30) day period, then Purchaser shall be deemed to have forever waived its right to recover any amount from Seller.

## **ARTICLE 5 - Title and Survey**

**5.1 Title Commitment.** Seller shall cause to be prepared and delivered to Purchaser on or before the Title Commitment Delivery Date: (i) a current commitment for title insurance or preliminary title report (the "Title Commitment") issued by the Title Company, in the amount of the Purchase Price, with Purchaser as the proposed insured, and (ii) copies of all documents of record referred to in the Title Commitment as exceptions to title to the Property.

**5.2 New or Updated Survey.** Purchaser may elect to obtain a new survey or revise, modify, or re-certify an existing survey ("Survey") as necessary in order for the Title Company to delete the survey exception from the Title Policy or to otherwise satisfy Purchaser's objectives.

**5.3 Title Review.** During the Title and Survey Review Period, Purchaser shall review title to the Property as disclosed by the Title Commitment and the Survey. Seller shall have no obligation to cure title objections except financing liens of an ascertainable amount created by, under or through Seller, which liens Seller shall cause to be released at or prior to Closing (with Seller having the right to apply

the Purchase Price or a portion thereof for such purpose), and Seller shall deliver the Property free and clear of any such financing liens. Seller further agrees to remove any exceptions or encumbrances to title which are voluntarily created by, under or through Seller after the Effective Date without Purchaser's consent (if requested, such consent shall not be unreasonably withheld or delayed). The term "Permitted Exceptions" shall mean: the specific exceptions (excluding exceptions that are part of the promulgated title insurance form) in the Title Commitment that the Title Company has not agreed to remove from the Title Commitment as of the end of the Title and Survey Review Period and that Seller is not required to remove as provided above; matters created by, through or under Purchaser; items shown on the Survey which have not been removed as of the end of the Inspection Period; real estate taxes not yet due and payable; rights of Seller under its lease if it exercises the Lease Option and any licensees under any Service Contracts not terminated as of Closing.

**5.4 Delivery of Title Policy at Closing.** At Closing, the Title Company shall issue, or commit at Closing to issue, to Purchaser an owner's title policy in accordance with the Title Commitment, insuring Purchaser's title to the Real Property in the amount of the Purchase Price, subject only to the standard exceptions and exclusions from coverage contained in such policy and the Permitted Exceptions (the "Title Policy").

## **ARTICLE 6 - Operations and Risk of Loss**

**6.1 Ongoing Operations.** From the Effective Date through Closing:

**6.1.1 Service Contracts.** Seller will perform its material obligations under the Service Contracts.

**6.1.2 New Contracts.** Seller will not enter into any contract that will be an obligation affecting the Property subsequent to the Closing, except contracts entered into in the ordinary course of business that are terminable without cause and without the payment of any termination penalty on not more than thirty (30) days' prior notice.

**6.1.3 Maintenance of Improvements; Removal of Personal Property.** Subject to Sections 6.2 and 6.3, Seller shall maintain all Improvements substantially in their present condition (ordinary wear and tear and casualty excepted) and in a manner consistent with Seller's maintenance of the Improvements during Seller's period of ownership. Seller will not remove any Tangible Personal Property except as may be required for necessary repair or replacement, and replacement shall be of approximately equal quality and quantity as the removed item of Tangible Personal Property.

**6.2 Damage.** If prior to Closing the Property is damaged by fire or other casualty, Seller shall estimate the cost to repair and the time required to complete repairs and will provide Purchaser written notice of Seller's estimation (the "Casualty Notice") as soon as reasonably possible after the occurrence of the casualty.

**6.2.1 Material.** In the event of any Material Damage to or destruction of the Property or any portion thereof prior to the Inspection Period, either Seller or Purchaser may, at its option, terminate this Agreement by delivering written notice to the other on or before the expiration of thirty (30) days after the date Seller delivers the Casualty Notice to Purchaser (and if necessary, the Closing Date shall be extended to give the parties the full thirty-day period to make such election and to obtain insurance settlement agreements with Seller's insurers). After the expiration of the Inspection Period, if Material Damage to or destruction of the Property or any portion thereof occurs, then Purchaser (but not Seller) may, at its option, terminate this Agreement by delivering written notice to Seller on or

before the expiration of thirty (30) days after the date Seller delivers the Casualty Notice to Purchaser (and if necessary, the Closing Date shall be extended to give the parties the full thirty-day period to make such election and to obtain insurance settlement agreements with Seller's insurers). Upon any such termination, the Initial Earnest Money (but not any Additional Earnest Money) shall be returned to Purchaser and the parties hereto shall have no further rights or obligations hereunder, other than those that by their terms survive the termination of this Agreement. If neither Seller nor Purchaser so terminates this Agreement within said thirty (30) day period, then the parties shall proceed under this Agreement and close on schedule (subject to extension of Closing as provided above), and as of Closing Seller shall assign to Purchaser, without representation or warranty by or recourse against Seller, all of Seller's rights in and to any resulting casualty insurance proceeds due Seller as a result of such damage or destruction and Purchaser shall assume full responsibility for all needed repairs, and Purchaser shall receive a credit at Closing for any deductible amount under such insurance policies (but the amount of the deductible plus insurance proceeds shall not exceed the lesser of (A) the cost of repair or (B) the Purchase Price). For the purposes of this Agreement, "Material Damage" and "Materially Damaged" means damage which, in Seller's reasonable estimation, exceeds \$350,000.00 to repair or which, in Seller's reasonable estimation, will take longer than one hundred twenty (120) days to repair.

**6.2.2 Not Material.** If the Property is not Materially Damaged, then neither Purchaser nor Seller shall have the right to terminate this Agreement, and Seller shall, at its option, either (i) repair the damage before the Closing in a manner reasonably satisfactory to Purchaser, or (ii) credit Purchaser at Closing for the reasonable cost to complete the repair (in which case Seller shall retain all casualty insurance proceeds and Purchaser shall assume full responsibility for all needed repairs).

**6.3 Condemnation.** If proceedings in eminent domain are instituted with respect to the Property or any portion thereof, Purchaser may, at its option, by written notice to Seller given within ten (10) days after Seller notifies Purchaser of such proceedings (and if necessary the Closing Date shall be automatically extended to give Purchaser the full ten-day period to make such election), either: (i) terminate this Agreement, in which case the Initial Earnest Money (but not any Additional Earnest Money) shall be immediately returned to Purchaser and the parties hereto shall have no further rights or obligations, other than those that by their terms survive the termination of this Agreement, or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Purchaser its entire right, title and interest in and to any condemnation award, and Purchaser shall have the sole right after the Closing to negotiate and otherwise deal with the condemning authority in respect of such matter. If Purchaser does not give Seller written notice of its election within the time required above, then Purchaser shall be deemed to have elected option (ii) above.

## **ARTICLE 7 - Closing**

**7.1 Closing.** The consummation of the transaction contemplated herein ("Closing") shall occur on the Closing Date at the offices of Title Company (or such other location as may be mutually agreed upon by Seller and Purchaser). Funds shall be deposited into and held by Title Company in a closing escrow account with a bank satisfactory to Purchaser and Seller. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct Title Company to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statements executed by Seller and Purchaser. Purchaser shall have the right to extend the Closing Date by up to six (6) months by depositing \$100,000 per each monthly extension. If Purchaser desires to so extend the Closing Date, then Purchaser shall, at least five (5) business days prior to the Closing Date then in effect, pay to Seller directly an Additional Earnest Money Deposit (in which case any other Earnest Money on deposit with the Title Company shall be released to Seller and applied to the Purchase

Price of the Closing), which Additional Earnest Money shall be retained by Seller in all events (but applied to the Purchase Price if the Closing occurs).

**7.2 Conditions to Parties' Obligation to Close.** In addition to all other conditions set forth herein, the obligation of Seller, on the one hand, and Purchaser, on the other hand, to consummate the transactions contemplated hereunder are conditioned upon the following:

**7.2.1 Representations and Warranties.** The other party's representations and warranties contained herein shall be true and correct in all material respects as of the date of this Agreement and the Closing Date;

**7.2.2 Deliveries.** As of the Closing Date, the other party shall have tendered all deliveries to be made at Closing; and

**7.2.3 Actions, Suits, etc.** There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, against the other party that would materially and adversely affect the operation or value of the Property or the other party's ability to perform its obligations under this Agreement.

So long as a party is not in default hereunder, if any condition to such party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date (or such earlier date as is provided herein), such party may, in its sole discretion, terminate this Agreement by delivering written notice to the other party on or before the Closing Date (or such earlier date as is provided herein), or elect to close (or to permit any such earlier termination deadline to pass) notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition. In the event such party elects to close (or to permit any such earlier termination deadline to pass), notwithstanding the non-satisfaction of such condition, said party shall be deemed to have waived said condition, and there shall be no liability on the part of any other party hereto for breaches of representations and warranties of which the party electing to close had knowledge at the Closing.

**7.3 Seller's Deliveries in Escrow.** As of or prior to the Closing Date, Seller shall deliver in escrow to Title Company the following:

**7.3.1 Deed.** A special warranty deed, in substantially the form attached hereto as Exhibit C, which shall include a list of Permitted Exceptions to which the conveyance shall be subject, executed and acknowledged by Seller, conveying to Purchaser Seller's interest in the Real Property (the "Deed");

**7.3.2 Bill of Sale, Assignment and Assumption.** A Bill of Sale, Assignment and Assumption of Contracts in the form of Exhibit B attached hereto (the "Assignment"), executed and acknowledged by Seller, vesting in Purchaser, without warranty, Seller's right, title and interest in and to the property described therein free of any claims, except for the Permitted Exceptions to the extent applicable;

**7.3.3 FIRPTA.** A Foreign Investment in Real Property Tax Act affidavit executed by Seller;

**7.3.4 Authority.** Evidence of the existence, organization and authority of Seller and of the authority of the persons executing documents on behalf of Seller reasonably satisfactory to the underwriter for the Title Policy; and

**7.3.5 Additional Documents.** Any additional documents that Title Company or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Seller or result in any new or additional obligation, covenant, representation or warranty of Seller under this Agreement beyond those expressly set forth in this Agreement).

**7.4 Purchaser's Deliveries in Escrow.** As of or prior to the Closing Date, Purchaser shall deliver in escrow to Title Company the following:

**7.4.1 Bill of Sale, Assignment and Assumption.** The Assignment, executed and acknowledged by Purchaser;

**7.4.2 Additional Documents.** Any additional documents that Seller, Title Company or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Purchaser or result in any new or additional obligation, covenant, representation or warranty of Purchaser under this Agreement beyond those expressly set forth in this Agreement).

**7.5 Closing Statements.** As of or prior to the Closing Date, Seller and Purchaser shall deposit with Title Company executed closing statements consistent with this Agreement in the form required by Title Company.

**7.6 Purchase Price.** At or before 1:00 p.m. local time on the Closing Date, Purchaser shall deliver to Title Company the Purchase Price, less the Earnest Money that is applied to the Purchase Price, plus or minus applicable prorations, in immediate, same-day U.S. federal funds wired for credit into Title Company's escrow account, which funds must be delivered in a manner to permit Title Company to deliver good funds to Seller or its designee on the Closing Date (and, if requested by Seller, by wire transfer); if Title Company is unable to deliver good funds to Seller or its designee on the Closing Date, then the closing statements and related prorations will be revised as necessary.

**7.7 Possession.** Seller shall deliver possession of the Property to Purchaser at the Closing subject only to the Permitted Exceptions.

**7.8 Delivery of Books and Records.** After the Closing, Seller shall leave at the Real Property to the extent in Seller's possession or control: maintenance records and warranties; plans and specifications; licenses, permits and certificates of occupancy; copies or originals of all books and records of account, contracts, unpaid bills and other papers or documents which pertain to the Property, keys, and other items, if any, used in the operation of the Property.

## **ARTICLE 8 - Prorations, Deposits, Commissions**

**8.1 Prorations.** At Closing, the following items shall be prorated as of the date of Closing with all items of income and expense for the Property being borne by Purchaser from and after (but including) the date of Closing: Fees and assessments; prepaid expenses and obligations under Service Contracts; accrued operating expenses; real and personal ad valorem taxes ("Taxes"); and any assessments by private covenant for the then-current calendar year of Closing. Specifically, the following shall apply to such prorations:

**8.1.1 Taxes.** If Taxes for the year of Closing are not known or cannot be reasonably estimated, Taxes shall be prorated based on Taxes for the year prior to Closing. Any additional Taxes relating to the year of Closing or prior years arising out of a change in the use of the Real Property or a change in ownership shall be assumed by Purchaser effective as of Closing and paid by Purchaser when due and payable, and Purchaser shall indemnify Seller from and against any and all such Taxes, which indemnification obligation shall survive the Closing.

**8.1.2 Utilities.** Purchaser shall take all steps necessary to effectuate the transfer of all utilities to its name as of the Closing Date, and where necessary, post deposits with the utility companies. Seller shall ensure that all utility meters are read as of the Closing Date. Seller shall be entitled to recover any and all deposits held by any utility company as of the Closing Date.

**8.2 Commissions.** Seller shall be responsible to Broker for a real estate sales commission at Closing (but only in the event of a Closing in strict accordance with this Agreement) in accordance with a separate agreement between Seller and Broker. Seller shall cause Broker to share a portion of its commission equal to one percent (1%) of the Purchase Price with PDQ Realty Partners ("Co-Broker"). Under no circumstances shall Seller owe a commission or other compensation directly to *Co-Broker* any other broker, agent or person. Other than as stated above in this Section 8.2, Seller and Purchaser each represent and warrant to the other that no real estate brokerage commission is payable to any person or entity in connection with the transaction contemplated hereby, and each agrees to and does hereby indemnify and hold the other harmless against the payment of any commission to any other person or entity claiming by, through or under Seller or Purchaser, as applicable. This indemnification shall extend to any and all claims, liabilities, costs and expenses (including reasonable attorneys' fees and litigation costs) arising as a result of such claims and shall survive the Closing.

**8.3 Closing Costs.** Closing costs shall be allocated between Seller and Purchaser in accordance with Section 1.2.

**8.4 Final Adjustment After Closing.** If final bills are not available or cannot be issued prior to Closing for any item being prorated under Section 8.1, then Purchaser and Seller agree to allocate such items on a fair and equitable basis as soon as such bills are available, final adjustment to be made as soon as reasonably possible after the Closing. Payments in connection with the final adjustment shall be due within thirty (30) days of written notice. All such rights and obligations shall survive the Closing.

## **ARTICLE 9 - Representations and Warranties**

**9.1 Seller's Representations and Warranties.** Seller represents and warrants to Purchaser that:

**9.1.1 Organization and Authority.** Seller has been duly organized and is validly existing in the state in which it was formed. Seller has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized and executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Seller, enforceable in accordance with their terms.

**9.1.2 Conflicts and Pending Actions.** There is no agreement to which Seller is a party or, to Seller's knowledge, that is binding on Seller which is in conflict with this Agreement. To Seller's knowledge, as of the Effective Date there is no action or proceeding pending or threatened

against Seller or relating to the Property, which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement.

**9.1.3 Service Contracts.** To Seller's knowledge, the list of Service Contracts to be delivered to Purchaser pursuant to this Agreement will be correct and complete as of the date of its delivery.

**9.2 Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller that:

**9.2.1 Organization and Authority.** Purchaser is qualified to do business in the State in which the Real Property is located. Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

**9.2.2 Conflicts and Pending Action.** There is no agreement to which Purchaser is a party or to Purchaser's knowledge binding on Purchaser which is in conflict with this Agreement. There is no action or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser which challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.

**9.3 Survival of Representations and Warranties.** The representations and warranties set forth in this Article 9 are made as of the date of this Agreement and, except where expressly limited to the Effective Date, are remade as of the Closing Date and shall not be deemed to be merged into or waived by the instruments of Closing, but shall survive the Closing for a period of six (6) months (the "Survival Period"). Terms such as "to Seller's knowledge," "to the best of Seller's knowledge," or like phrases mean the actual present and conscious awareness or knowledge of Sam Spade, without any duty of inquiry or investigation; provided that so qualifying Seller's knowledge shall in no event give rise to any personal liability on the part of Sam Spade or any other officer or employee of Seller, on account of any breach of any representation or warranty made by Seller herein. Said terms do not include constructive knowledge, imputed knowledge, or knowledge Seller or such persons do not have but could have obtained through further investigation or inquiry. No broker, agent, or party other than Seller is authorized to make any representation or warranty for or on behalf of Seller. Each party shall have the right to bring an action against the other on the breach of a representation or warranty hereunder, but only on the following conditions: (i) the party bringing the action for breach first learns of the breach after Closing and files such action within the Survival Period, and (ii) neither party shall have the right to bring a cause of action for a breach of a representation or warranty unless the damage to such party on account of such breach (individually or when combined with damages from other breaches) equals or exceeds Twenty Thousand Dollars (\$20,000.00). Neither party shall have any liability after Closing for the breach of a representation or warranty hereunder of which the other party hereto had knowledge as of Closing. Furthermore, Purchaser agrees that the maximum liability of Seller for the alleged breach of any or all representations or warranties set forth in this Agreement is limited to One Hundred Thousand Dollars (\$100,000.00). The provisions of this Section 9.3 shall survive the Closing. Any breach of a representation or warranty that occurs prior to Closing shall be governed by Article 10.

## **ARTICLE 10 - Default and Remedies**

**10.1 Seller's Remedies.** If Purchaser fails to perform its obligations pursuant to this Agreement at or prior to Closing for any reason except failure by Seller to perform hereunder, or if prior

to Closing any one or more of Purchaser's representations or warranties are breached in any material respect, Seller shall be entitled, as its sole remedy (except as provided in Sections 4.10, 8.2, 10.3 and 10.4 hereof), to terminate this Agreement and recover the Earnest Money as liquidated damages and not as penalty, in full satisfaction of claims against Purchaser hereunder. Seller and Purchaser agree that Seller's damages resulting from Purchaser's default are difficult, if not impossible, to determine and the Earnest Money is a fair estimate of those damages which has been agreed to in an effort to cause the amount of such damages to be certain. Notwithstanding anything in this Section 10.1 to the contrary, in the event of Purchaser's default or a termination of this Agreement, Seller shall have all remedies available at law or in equity in the event Purchaser or any party related to or affiliated with Purchaser is asserting any claims or right to the Property that would otherwise delay or prevent Seller from having clear, indefeasible title to the Property. In all other events Seller's remedies shall be limited to those described in this Section 10.1 and Sections 4.10, 8.2, 10.3 and 10.4 hereof. If Closing is consummated, Seller shall have all remedies available at law or in equity if Purchaser fails to perform any obligation of Purchaser under this Agreement.

**10.2 Purchaser's Remedies.** If Seller fails to perform its obligations pursuant to this Agreement for any reason except failure by Purchaser to perform hereunder, or if prior to Closing any one or more of Seller's representations or warranties are breached in any material respect, Purchaser shall elect, as its sole remedy (Purchaser hereby waiving all other rights or remedies), either to (i) terminate this Agreement by giving Seller timely written notice of such election prior to or at Closing and recover the Earnest Money, (ii) enforce specific performance, or (iii) waive said failure or breach and proceed to Closing. Notwithstanding anything herein to the contrary, Purchaser shall be deemed to have elected to terminate this Agreement if Purchaser fails to deliver to Seller written notice of its intent to file a claim or assert a cause of action for specific performance against Seller on or before ten (10) business days following the scheduled Closing Date or, having given such notice, fails to file a lawsuit asserting such claim or cause of action in the county in which the Property is located within two (2) months following the scheduled Closing Date. Purchaser's remedies shall be limited to those described in this Section 10.2 and Sections 10.3 and 10.4 hereof. IN NO EVENT SHALL SELLER'S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, OWNERS OR AFFILIATES, ANY OFFICER, DIRECTOR, EMPLOYEE OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.

**10.3 Attorneys' Fees.** If either party hereto employs an attorney in connection with claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such transaction.

**10.4 Other Expenses.** If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees or charges due to Title Company for holding the Earnest Money as well as any escrow cancellation fees or charges and any fees or charges due to the Title Company for preparation and/or cancellation of the Title Commitment.

## **ARTICLE 11 - Disclaimers, Release and Indemnity**

**11.1 Disclaimers By Seller.** Except as expressly set forth in this Agreement, it is understood and agreed that Seller has not at any time made and are not now making, and they specifically disclaim, any warranties or representations of any kind or character, express or implied, with respect to the Property, including, but not limited to, warranties or representations as to (i) matters of title,



(ii) environmental matters relating to the Property or any portion thereof, including, without limitation, the presence of Hazardous Materials in, on, under or in the vicinity of the Property, (iii) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water, and geologic faults and the resulting damage of past and/or future faulting, (iv) whether, and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, wetlands, flood prone area, flood plain, floodway or special flood hazard, (v) drainage, (vi) soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any undershoring, (vii) the presence of endangered species or any environmentally sensitive or protected areas, (viii) zoning or building entitlements to which the Property or any portion thereof may be subject, (ix) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas and electric, (x) usages of adjoining property, (xi) access to the Property or any portion thereof, (xii) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, (xiii) the condition or use of the Property or compliance of the Property with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws, (xiv) the existence or non-existence of underground storage tanks, surface impoundments, or landfills, (xv) the merchantability of the Property or fitness of the Property for any particular purpose, (xvi) the truth, accuracy or completeness of the Property Documents, (xvii) tax consequences, or (xviii) any other matter or thing with respect to the Property.

**11.2 Sale “As Is, Where Is.”** PURCHASER IS PURCHASING THE PROPERTY “AS IS, WITH ALL FAULTS” WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED (EXCEPT ANY EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT OR THE DOCUMENTS DELIVERED AT CLOSING), INCLUDING IMPLIED WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OR ANY OTHER WARRANTIES WHATSOEVER. AS OF THE CLOSING, PURCHASER ASSUMES ALL RISKS REGARDING ANY DEFECTS, DAMAGE OR ADVERSE CONDITIONS PERTAINING TO THE CONDITION OF THE PROPERTY, OR ANY LOSS, DIMINUTION IN VALUE, OR INJURY TO THE PROPERTY ARISING FROM ANY GOVERNMENTAL STATUTES, ORDINANCES, REGULATIONS, DECISIONS OR POLICIES PERTAINING TO THE PRESENT OR FUTURE CONDITION, USE, OCCUPANCY, OPERATIONS, MAINTENANCE, REPAIR, IMPROVEMENT, OWNERSHIP OR DISPOSITION OF THE PROPERTY OR ANY PART THEREOF, AND PURCHASER ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR UNDER ANY INSTRUMENT DELIVERED BY SELLER TO PURCHASER AT CLOSING, (A) NEITHER SELLER NOR ANY OF ITS AGENTS HAVE MADE, AND SPECIFICALLY NEGATE AND DISCLAIM, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, OF, AS TO, CONCERNING, OR WITH RESPECT TO, (i) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (ii) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH MAY BE CONDUCTED THEREON, (iii) THE COMPLIANCE OF OR BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY, (iv) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, OR (v) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND (B) NEITHER SELLER NOR ANY OF ITS AGENTS HAVE MADE, AND SPECIFICALLY NEGATE AND DISCLAIM, ANY REPRESENTATIONS OR WARRANTIES REGARDING COMPLIANCE OF

THE PROPERTY WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, REQUIREMENTS, OR COMMON LAW INCLUDING THOSE PERTAINING TO SOLID WASTE, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTY, OF ANY HAZARDOUS SUBSTANCES, AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, AND THE REGULATIONS PROMULGATED THEREUNDER ("CERCLA"). PURCHASER SHALL RELY SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER OR ITS AGENTS OR CONTRACTORS, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR EXHIBITS OR UNDER ANY INSTRUMENT DELIVERED BY SELLER TO PURCHASER OR ITS PERMITTED ASSIGNS AT CLOSING. SELLER SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR THE OPERATION THEREOF, FURNISHED BY ANY PARTY PURPORTING TO ACT ON BEHALF OF SELLER. EXCEPT TO THE EXTENT OF ANY BREACH OF ANY EXPRESS REPRESENTATION, WARRANTY OR COVENANT OF SELLER UNDER THIS AGREEMENT OR UNDER ANY INSTRUMENT DELIVERED BY SELLER TO PURCHASER OR ITS ASSIGNS AT CLOSING. Except as expressly set forth in this Agreement, Purchaser has not relied and will not rely on, and Seller has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, Property information packages distributed with respect to the Property) made or furnished by Seller or any real estate broker, agent, or third party representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Purchaser represents that it is a knowledgeable, experienced and sophisticated purchaser of real estate and that, except as expressly set forth in this Agreement, it is relying solely on its own expertise and that of Purchaser's consultants in purchasing the Property and shall make an independent verification of the accuracy of any documents and information provided by Seller. Purchaser will conduct such inspections and investigations of the Property as Purchaser deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same. By failing to terminate this Agreement prior to the expiration of the Inspection Period, Purchaser acknowledges that Seller has afforded Purchaser a full opportunity to conduct such investigations of the Property as Purchaser deemed necessary to satisfy itself as to the condition of the Property and the existence or non-existence or curative action to be taken with respect to any Hazardous Materials on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than such representations, warranties and covenants of Seller as are expressly set forth in this Agreement. Upon Closing, Purchaser shall assume the risk that adverse matters, including, but not limited to, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Purchaser's inspections and investigations.

**Purchaser's Initials** \_\_\_\_\_

**11.3 Seller Released from Liability.** PURCHASER ACKNOWLEDGES THAT IT WILL HAVE THE OPPORTUNITY TO INSPECT THE PROPERTY DURING THE INSPECTION PERIOD, AND DURING SUCH PERIOD, OBSERVE ITS PHYSICAL CHARACTERISTICS AND EXISTING CONDITIONS AND THE OPPORTUNITY TO CONDUCT SUCH INVESTIGATION AND STUDY ON AND OF THE PROPERTY AND ADJACENT AREAS AS PURCHASER DEEMS NECESSARY, AND PURCHASER HEREBY FOREVER RELEASES AND DISCHARGES SELLER FROM ALL RESPONSIBILITY AND LIABILITY, INCLUDING WITHOUT LIMITATION, LIABILITIES UNDER CERCLA, OTHER ENVIRONMENTAL LAWS, AND THE COMMON LAW, REGARDING THE CONDITION (INCLUDING, BUT NOT LIMITED TO, THE PRESENCE ON, UNDER,

ADJACENT TO, OR OTHERWISE AFFECTING THE PROPERTY, IN THE SOIL, AIR, STRUCTURES, SEDIMENT, AND SURFACE AND SUBSURFACE WATERS, OF HAZARDOUS MATERIALS OR OTHER MATERIALS THAT MAY BE DETERMINED TO BE HAZARDOUS MATERIALS, AND ANY STRUCTURAL AND GEOLOGIC CONDITIONS, SUBSURFACE SOIL AND WATER CONDITIONS ON, UNDER, ADJACENT TO OR OTHERWISE AFFECTING THE PROPERTY) VALUATION, SALABILITY OR UTILITY OF THE PROPERTY, OR ITS SUITABILITY FOR ANY PURPOSE WHATSOEVER. PURCHASER FURTHER HEREBY WAIVES (AND BY CLOSING THIS TRANSACTION WILL BE DEEMED TO HAVE WAIVED) ANY AND ALL OBJECTIONS, COMPLAINTS, AND CLAIMS (INCLUDING, BUT NOT LIMITED TO, FEDERAL, STATE AND LOCAL STATUTORY AND COMMON LAW BASED ACTIONS, AND ANY PRIVATE RIGHT OF ACTION UNDER ANY FEDERAL, STATE OR LOCAL LAWS, REGULATIONS OR GUIDELINES TO WHICH THE PROPERTY IS OR MAY BE SUBJECT, INCLUDING, BUT NOT LIMITED TO, CERCLA) CONCERNING THE PHYSICAL CHARACTERISTICS AND ANY EXISTING CONDITIONS OF THE PROPERTY. PURCHASER FURTHER HEREBY ASSUMES THE RISK OF CHANGES IN APPLICABLE LAWS RELATING TO PAST, PRESENT AND FUTURE ENVIRONMENTAL CONDITIONS ON THE PROPERTY AND THE RISK THAT ADVERSE PHYSICAL CHARACTERISTICS AND CONDITIONS, INCLUDING, WITHOUT LIMITATION, THE PRESENCE OF HAZARDOUS MATERIALS OR OTHER CONTAMINANTS, MAY NOT HAVE BEEN REVEALED BY ITS INVESTIGATION.

**11.4 “Hazardous Materials” Defined.** For purposes hereof, “Hazardous Materials” means “Hazardous Material,” “Hazardous Substance,” “Pollutant or Contaminant,” and “Petroleum” and “Natural Gas Liquids,” as those terms are defined or used in Section 101 of CERCLA, and any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, infectious materials, and biological matter, including, without limitation, mold, mildew, and fungi.

**11.5 Indemnity.** PURCHASER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS OF AND FROM ANY AND ALL LIABILITIES, CLAIMS, DEMANDS, AND EXPENSES OF ANY KIND OR NATURE WHICH ARISE OR ACCRUE AFTER CLOSING AND WHICH ARE IN ANY WAY RELATED TO THE OWNERSHIP, MAINTENANCE, OR OPERATION OF THE PROPERTY BY PURCHASER AND ITS SUCCESSORS AND ASSIGNS, INCLUDING, WITHOUT LIMITATION, IN CONNECTION WITH HAZARDOUS MATERIALS AND TO CONDITIONS ON THE PROPERTY.

**11.6 Survival.** The terms and conditions of this Article 11 shall expressly survive the Closing, not merge with the provisions of any closing documents and shall be incorporated into the Deed.

Purchaser acknowledges and agrees that the disclaimers and other agreements set forth herein are an integral part of this Agreement and that Seller would not have agreed to sell the Property to Purchaser for the Purchase Price without the disclaimers and other agreements set forth above.

## **ARTICLE 12 - Miscellaneous**

**12.1 Parties Bound; Assignment.** This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto. Purchaser may assign its rights under this Agreement upon the following conditions: (i) the assignee of Purchaser must be an affiliate of Purchaser or an entity controlling, controlled by, or under common control with Purchaser, (ii) all of the Earnest

Money must have been delivered in accordance herewith, (iii) the Inspection Period shall be deemed to have ended, (iv) the assignee of Purchaser shall assume all obligations of Purchaser hereunder, but Purchaser shall remain primarily liable for the performance of Purchaser's obligations, and (v) a copy of the fully executed written assignment and assumption agreement shall be delivered to Seller at least ten (10) days prior to Closing.

**12.2 Headings.** The article, section, subsection, paragraph and/or other headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

**12.3 Invalidity and Waiver.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

**12.4 Governing Law.** This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the state of Texas.

**12.5 Survival.** The provisions of this Agreement that contemplate performance after the Closing and the obligations of the parties not fully performed at the Closing shall survive the Closing and shall not be deemed to be merged into or waived by the instruments of Closing.

**12.6 Entirety and Amendments.** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

**12.7 Time.** Time is of the essence in the performance of this Agreement.

**12.8 Confidentiality.** Purchaser shall make no public announcement or disclosure of any information related to this Agreement to outside brokers or third parties, before the conclusion of the Inspection Period without the prior written specific consent of Seller; provided, however, that Purchaser may, subject to the provisions of Section 4.7, make disclosure as necessary to perform its obligations hereunder and as may be required under laws or regulations applicable to Purchaser at any time, and after the end of the Inspection Period so long as this Agreement is in effect and after Closing, Purchaser may make known to the public its intent to sell or lease the Real Property.

**12.9 Notices.** All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1.3. Any such notices shall, unless otherwise provided herein, be given or served (i) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (ii) by overnight delivery using a nationally recognized overnight courier, (iii) by personal delivery, or (iv) by facsimile, evidenced by confirmed receipt. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) business day after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified between the hours of 8:00 a.m. and 5:00 p.m. of any business day with delivery made after such hours to be deemed received the following business day. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a

failure to give notice. Notices given by counsel to the Purchaser shall be deemed given by Purchaser and notices given by counsel to the Seller shall be deemed given by Seller.

**12.10 Construction.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

**12.11 Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. local time in the state in which the Real Property is located.

**12.12 Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages, provided that executed originals thereof are forwarded to the other party on the same day by any of the delivery methods set forth in Section 12.9 other than facsimile.

**12.13 No Recordation.** Without the prior written consent of Seller, there shall be no recordation of either this Agreement or any memorandum hereof, or any affidavit pertaining hereto, and any such recordation of this Agreement or memorandum or affidavit by Purchaser without the prior written consent of Seller shall constitute a default hereunder by Purchaser, whereupon Seller shall have the remedies set forth in Section 10.1 hereof.

**12.14 Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party at Closing, each party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the conveyance, transfer and assignment of the Property to Purchaser.

**12.15 Discharge of Obligations.** The acceptance of the Deed by Purchaser shall be deemed to be a full performance and discharge of every representation and warranty made by Seller herein and every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement, except those which are herein specifically stated to survive Closing.

**12.16 No Third Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing, except that a tenant of the Property may enforce Purchaser's indemnity obligation under Section 4.10 hereof.

**[SIGNATURE PAGES AND EXHIBITS TO FOLLOW]**

**SIGNATURE PAGE TO AGREEMENT OF PURCHASE AND SALE**

**BY AND BETWEEN**

**ABC, LTD.**

**AND**

**DEF, TRUSTEE**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

**SELLER:**

A.B.C. PROPERTY MANAGEMENT, LTD.,  
a Texas limited partnership

By: ABC Property Management GP, LLC,  
a Texas limited liability company, its general partner

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

Date executed by Seller: September \_\_\_\_, 2005

**PURCHASER:**

\_\_\_\_\_  
Hermione Potter, Trustee

Date executed by Purchaser: September \_\_\_\_, 2005

**JOINDER BY TITLE COMPANY**

Title Company has executed this Agreement in order to confirm that Title Company has received and shall hold the Initial Earnest Money required to be deposited under this Agreement and the interest earned thereto, in escrow, and shall disburse the Earnest Money, and the interest earned thereon, pursuant to the provisions of this Agreement.

CHICAGO TITLE INSURANCE COMPANY,

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

Date executed by Title Company: \_\_\_\_\_, 2\_\_\_\_

**LIST OF EXHIBITS**

- A - Legal Description of Real Property
- B - Bill of Sale, Assignment and Assumption of Contracts
- C - Form of Deed

**EXHIBIT A**

**LEGAL DESCRIPTION**



**EXHIBIT B**

**BILL OF SALE, ASSIGNMENT AND ASSUMPTION**

(\_\_\_\_\_, *Houston, Texas*)

THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION is made as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between ABC, Ltd., a Texas limited partnership ("Assignor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

W I T N E S S E T H:

For good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby sells, transfers, assigns and conveys to Assignee the following:

a. All right, title and interest of Assignor in and to all tangible personal property ("Personalty") set forth in the inventory on Exhibit A attached hereto and made a part hereof, and located on, and used in connection with the management, maintenance or operation of that certain land and improvements located in the County of Harris, State of Texas, as more particularly described in Exhibit B attached hereto and made a part hereof ("Real Property").

b. To the extent assignable, all right, title and interest of Assignor in and to those certain contracts set forth on Exhibit C attached hereto and made a part hereof, and all warranties, guaranties, indemnities and claims (including, without limitation, for workmanship, materials and performance) and which exist or may hereafter exist against any contractor, subcontractor, manufacturer or supplier or laborer or other services relating thereto (collectively, the "Contracts").

2. This Bill of Sale, Assignment and Assumption is given pursuant to that certain Agreement of Purchase and Sale (as amended, the "Purchase Agreement") dated as of \_\_\_\_\_, between Assignor and Assignee, providing for, among other things, the conveyance of the Personalty and the Contracts.

3. As set forth in Article 11 of the Purchase Agreement, which is hereby incorporated by reference as if herein set out in full and except as set forth herein, the property conveyed hereunder is conveyed by Assignor and accepted by Assignee **AS IS, WHERE IS, AND WITHOUT ANY WARRANTIES OF WHATSOEVER NATURE, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY SET FORTH IN THE PURCHASE AGREEMENT, IT BEING THE INTENTION OF ASSIGNOR AND ASSIGNEE EXPRESSLY TO NEGATE AND EXCLUDE ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PROPERTY CONVEYED HEREUNDER, OR BY ANY SAMPLE OR MODEL THEREOF, AND ALL OTHER WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY THE TEXAS UNIFORM COMMERCIAL CODE.**

4. Assignee hereby accepts the assignment of the Personalty and the Contracts and agrees to assume and discharge, in accordance with the terms thereof, all of the obligations thereunder from and after the date hereof.

5. Assignee agrees to indemnify and hold harmless Assignor from any cost, liability, damage or expense (including attorneys' fees) arising out of or relating to Assignee's failure to perform any of the foregoing obligations arising from and accruing on or after the date hereof.

6. Assignor agrees to indemnify and hold harmless Assignee from any cost, liability, damage or expense (including attorneys' fees) arising out of or relating to Assignor's failure to perform any of the obligations of Assignor under the Contracts to the extent accruing prior to the date hereof.

7. This Bill of Sale, Assignment and Assumption may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Bill of Sale, Assignment and Assumption as of the date first above written.

**ASSIGNOR:**

ABC, LTD.,  
a Texas limited partnership

By: ABC GP, LLC,  
a Texas limited liability company,  
its general partner

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

**ASSIGNEE:**

\_\_\_\_\_  
a \_\_\_\_\_

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

[INSERT APPROPRIATE ACKNOWLEDGMENTS FOR THE STATE]

Exhibit A      Personalty  
Exhibit B      Real Property  
Exhibit C      Contracts

**EXHIBIT C**

**SPECIAL WARRANTY DEED**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

STATE OF TEXAS                   §  
  §           KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF HARRIS           §

That, ABC, LTD., a Texas limited partnership ("Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration this day paid by \_\_\_\_\_ ("Grantee"), whose address is \_\_\_\_\_, the receipt and sufficiency of which consideration are hereby confessed and acknowledged,

has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY unto Grantee that certain real property more particularly described in Exhibit "A," attached hereto and made a part hereof (the "Property").

The conveyance of the Property is made by Grantor and accepted by Grantee subject to (a) the matters herein stated, (b) the matters set forth on Exhibit "B," attached hereto and made a part hereof (the "Permitted Exceptions"), and (c) real estate taxes and standby fees for the year 2005 (which are assumed by Grantee).

THE PROPERTY IS CONVEYED TO AND ACCEPTED BY GRANTEE IN ITS "AS IS, WHERE IS, WITH ALL FAULTS", CONDITION WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED (EXCEPT THE SPECIAL WARRANTY OF TITLE SET FORTH IN THIS DEED), INCLUDING IMPLIED WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OR ANY OTHER WARRANTIES WHATSOEVER. GRANTEE ASSUMES ALL RISKS REGARDING ANY DEFECTS, DAMAGE OR ADVERSE CONDITIONS PERTAINING TO THE CONDITION OF THE PROPERTY, OR ANY LOSS, DIMINUTION IN VALUE, OR INJURY TO THE PROPERTY ARISING FROM ANY GOVERNMENTAL STATUTES, ORDINANCES, REGULATIONS, DECISIONS OR POLICIES PERTAINING TO THE PRESENT OR FUTURE CONDITION, USE, OCCUPANCY, OPERATIONS, MAINTENANCE, REPAIR, IMPROVEMENT, OWNERSHIP OR DISPOSITION OF THE PROPERTY OR ANY PART THEREOF, AND GRANTEE ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY PROVIDED IN THIS DEED (A) NEITHER GRANTOR NOR ANY OF ITS AGENTS HAVE MADE, AND SPECIFICALLY NEGATE AND DISCLAIM, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, OF, AS TO, CONCERNING, OR WITH RESPECT TO, (i) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (ii) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH MAY BE CONDUCTED THEREON, (iii) THE COMPLIANCE OF OR BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY, (iv) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE

PROPERTY, OR (v) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND (B) NEITHER GRANTOR NOR ANY OF ITS AGENTS HAVE MADE, AND SPECIFICALLY NEGATE AND DISCLAIM, ANY REPRESENTATIONS OR WARRANTIES REGARDING COMPLIANCE OF THE PROPERTY WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, REQUIREMENTS, OR REGARDING LIABILITIES UNDER COMMON LAW, INCLUDING THOSE PERTAINING TO HAZARDOUS MATERIALS, AS DEFINED BELOW, OR THE DISPOSAL OR EXISTENCE IN, ON, OR UNDER THE PROPERTY, OR ANY ADJACENT PROPERTIES, OF ANY HAZARDOUS MATERIALS. GRANTEE ACKNOWLEDGES THAT GRANTOR HAS AFFORDED GRANTEE A FULL OPPORTUNITY TO CONDUCT SUCH INVESTIGATIONS OF THE PROPERTY AS GRANTEE DEEMS NECESSARY TO SATISFY GRANTEE AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NON EXISTENCE OF, OR THE NECESSITY FOR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO, ANY HAZARDOUS MATERIALS ON OR DISCHARGED FROM THE PROPERTY. GRANTEE ASSUMES THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL OR CONSTRUCTION DEFECTS OR ADVERSE ENVIRONMENTAL, HEALTH OR SAFETY CONDITIONS, MAY NOT HAVE BEEN REVEALED BY GRANTEE'S INSPECTIONS AND INVESTIGATIONS.

GRANTEE HEREBY FOREVER RELEASES AND DISCHARGES GRANTOR, GRANTOR'S PARTNERS, PREDECESSORS AND SUCCESSORS FROM ALL RESPONSIBILITY AND LIABILITY (INCLUDING WITHOUT LIMITATION, LIABILITIES UNDER CERCLA), REGARDING THE CONDITION, VALUATION, SALABILITY OR UTILITY OF THE PROPERTY, OR ITS SUITABILITY FOR ANY PURPOSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, WITH RESPECT TO (I) THE PRESENCE IN THE SOIL, AIR, STRUCTURES AND SURFACE AND SUBSURFACE WATERS OF HAZARDOUS MATERIALS, AND (II) ANY STRUCTURAL CONDITIONS, GEOLOGIC CONDITIONS, SUBSURFACE SOIL AND WATER CONDITIONS). GRANTEE FURTHER HEREBY WAIVES ANY AND ALL OBJECTIONS, COMPLAINTS, CAUSES OF ACTION, RIGHTS AND REMEDIES (INCLUDING, BUT NOT LIMITED TO, FEDERAL, STATE AND LOCAL STATUTORY AND COMMON LAW BASED ACTIONS, AND ANY PRIVATE RIGHT OF ACTION UNDER ANY FEDERAL, STATE OR LOCAL LAWS, REGULATIONS OR GUIDELINES TO WHICH THE PROPERTY IS OR MAY BE SUBJECT, INCLUDING, BUT NOT LIMITED TO, CERCLA) CONCERNING THE PHYSICAL CHARACTERISTICS AND ANY EXISTING CONDITIONS OF THE PROPERTY INCLUDING, WITHOUT LIMITATION, ANY AND ALL RIGHTS GRANTEE MAY NOW HAVE OR HEREAFTER HAVE TO SEEK CONTRIBUTION OR COST RECOVERY FROM GRANTOR, GRANTOR'S PARTNERS, PREDECESSORS AND SUCCESSORS UNDER CERCLA, AS THE SAME MAY BE FURTHER AMENDED AND REPLACED BY ANY SIMILAR LAW, ORDINANCE, RULE, ORDER, OR REGULATION. GRANTEE HEREBY ASSUMES THE RISK OF CHANGES IN APPLICABLE LAWS AND REGULATIONS RELATING TO PAST, PRESENT AND FUTURE ENVIRONMENTAL CONDITIONS ON THE PROPERTY.

For purposes hereof, "Hazardous Materials" means "Hazardous Substance," "Pollutant or Contaminant," and "Petroleum" and "Natural Gas Liquids," as those terms are defined or used in Section 101 of CERCLA, and any other substances regulated, or that in the future become regulated, under any federal, state, or local law, including, without limitation, statutes, ordinances, rules, and orders, because of their effect or potential effect on public health or the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, infectious materials, and biological matter, including, without limitation, mold, mildew and fungi.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereunto in anywise belonging, unto Grantee, its successors 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, subject, however, to (a) the Permitted Exceptions and the matters herein stated, and (b) taxes and standby fees for the year 2005, which have been assumed by Grantee.

Grantor, for the same consideration and subject to the Permitted Exceptions, grants, sells, and conveys to Grantee, without express or implied warranty, the strips or gores, if any, between the Property and abutting properties and land lying in or under any public thoroughfare, opened or proposed, abutting or adjacent to the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. All warranties that might arise by common law as well as the warranties in section 5.023 of the Texas Property Code (or its successor) are excluded as to the property conveyed by this paragraph.

EXECUTED on the dates of the acknowledgments below to be effective as of \_\_\_\_\_, 2\_\_\_\_.

ABC, LTD.,  
a Texas limited partnership

By: ABC GP, LLC,  
a Texas limited liability company,  
its general partner

By: \_\_\_\_\_  
\_\_\_\_\_, Manager

“GRANTOR”

Grantee joins in the execution of this instrument for the purposes of acknowledging and agreeing to the terms and provisions contained in this instrument.

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

GRANTEE"

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS       §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_,  
by\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_  
My Commission Expires:\_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS       §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_  
My Commission Expires:\_\_\_\_\_