

**EARNEST MONEY
CONTRACT**

THE STATE OF TEXAS §
§
COUNTY OF GALVESTON §

This contract (hereinafter referred to as the "Contract") is made this **23** day of **September**, 2008, by and between WIGHT REALTY INTERESTS, LTD., a limited partnership, by and through Wight Management L.L.C., its general partner, of 4300 Mandale, Alvin, Texas 77511 (hereinafter referred to as "Seller") and CITY OF FRIENDSWOOD, TEXAS, a home rule municipal corporation of the State of Texas, located in Galveston and Harris Counties (hereinafter referred to as "Purchaser"), each acting by and through their respective hereunto duly authorized officers.

1. **REAL PROPERTY.** Purchaser agrees to purchase from Seller, upon the terms and conditions set forth herein, and Seller agrees to sell to Purchaser, upon the terms and conditions set forth herein, all of that certain real property being three tracts of land in the area of FM 528 in Brazoria County, Texas, near the city limits of the City of Friendswood (collectively, the "Real Property" and/or "Property"), being described as follows:

A. **"Parcel A"- A 29.914 acre tract (BCAD Property ID 180389)** being Lots 45, 46 and 47 of the Subdivision of the I & GN RR Company Survey No. 22, Abstract 693, Brazoria County, Texas, according to the Plat recorded in Volume 1, Page 67, Plat Records of Brazoria County, Texas, and being more particularly described by metes and bounds as follows:

**(SEE METES AND BOUNDS DESCRIPTION AND MAP
ATTACHED HERETO AS EXHIBIT "A," SAME BEING
MADE A PART HEREOF FOR ALL PURPOSES)**

and in its present condition, "as is," unless otherwise specified herein, all of such property, together with improvements, being hereinafter referred to as the "Parcel A." **Parcel A shall be improved** by Seller pursuant to Section 6(a) of this Contract and Purchaser's agreement to purchase Parcel A and the Parcel A

Purchase Price (defined below) are subject to Seller's construction of the Parcel A Improvements by the Closing Date (defined below).

B. "Parcel B"- A 20.00 acre tract being comprised of two contiguous tracts described as follows:

i) A ten acre tract being 10.00 acres of land, (BCAD Property ID 180382) being all of Lot 30 of the subdivision of Section 22, in the I.& G.N.R.R. Company Survey, Abstract 693, Brazoria County, Texas, the plat of said subdivision being recorded in Volume 1, Page 67, Plat Records, Brazoria County, Texas, and being more particularly described by metes and bounds as follows:

(SEE METES AND BOUNDS DESCRIPTION AND MAP ATTACHED HERETO AS EXHIBIT "B," SAME BEING MADE A PART HEREOF FOR ALL PURPOSES)

and in its present condition, "as is," unless otherwise specified herein, all of such property being hereinafter referred to as the "Parcel B-1."

ii) A ten acre tract being the southernmost 10.00 acres of land of the 14.99 acre tract described as BCAD Property ID 180392, being bounded to the north by the Dickinson Drainage Channel, to the south by the property described as BCAD Property ID 180382, to the west by the property described as BCAD Property ID 180393, and to the east by the property described as BCAD Property ID 180389, Brazoria County, Texas, and being more particularly described by metes and bounds as follows:

(SEE METES AND BOUNDS DESCRIPTION AND MAP ATTACHED HERETO AS EXHIBIT "C," SAME BEING MADE A PART HEREOF FOR ALL PURPOSES)

and in its present condition, "as is," unless otherwise specified herein, all of such property being hereinafter referred to as the "Parcel B-2."

Parcel B shall be improved by Seller pursuant to Section 6(b) of this Contract and Purchaser's agreement to purchase Parcel B and the Parcel B Purchase Price (defined below) are subject to Seller's construction of the Parcel B Improvements by the Closing Date (defined below); provided that Seller's obligation to sell Parcel B shall be contingent upon Seller obtaining title to Parcel B.

C. Parcel "C"- A 10.00 acre tract (BCAD Property ID 180393) being the southernmost 10.00 acres of land of the tract described as BCAD Property ID 180393, being bounded to the north by the Dickinson Drainage Channel, to the south by the property described as BCAD Property ID 180382, to the west by the property described as BCAD Property ID [Tract 27, 28 and 29], and to the east by the property described as BCAD Property ID 180392, Brazoria County, Texas, and being more particularly described by metes and bounds as follows:

**(SEE METES AND BOUNDS DESCRIPTION AND MAP
ATTACHED HERETO AS EXHIBIT "D," SAME BEING
MADE A PART HEREOF FOR ALL PURPOSES)**

and in its present condition, "as is," unless otherwise specified herein, all of such property being hereinafter referred to as the "Parcel C."

Parcel C shall be improved by Seller pursuant to Section 6(c) of this Contract and Purchaser's agreement to purchase Parcel C and the Parcel C Purchase Price (defined below) are subject to Seller's construction of the Parcel C Improvements by the Closing Date (defined below); provided that Seller's obligation to sell Parcel C shall be contingent upon Seller obtaining title to Parcel C.

Notwithstanding anything to the contrary set forth herein, Seller shall retain all mineral rights to Parcel A, Parcel B and Parcel C in the deed or deeds conveying such real property to Purchaser.

2. **PURCHASE PRICE.** The purchase price for the Real Property described above shall be as follows:

- A. **Parcel A.** The purchase price for Parcel A shall be the sum of One Million Seven Hundred Fifty-Seven Thousand Seven hundred and Eight and 20/100 Dollars (\$1,757,708.20), subject to the adjustment as set forth below (the "Parcel A Purchase Price"). The Parcel A Purchase Price is comprised of two components: Six Hundred Fifty-Eight Thousand One Hundred Eight Dollars (\$658,108.00) for the land and One Million Ninety-Nine Thousand Six Hundred and 20/100 Dollars (\$1,099,600.20) for the Parcel A Cost of Improvements (defined in Section 6 (a) of this Contract. The Parcel A Cost of Improvements is based upon an estimate for the conceptual plan of improvements as attached as Exhibit E. The Purchase Price will be adjusted if the Parcel A Cost of Improvements is different than One Million Ninety-Nine Thousand Six Hundred and 20/100 Dollars (\$1,099,600.20). The Purchaser and Seller agree that if the Parcel A Cost of Improvements is less than the One Million Ninety-Nine Thousand Six Hundred and 20/100 Dollars (\$1,099,600.20), then the Parcel A Purchase Price shall be reduced by the difference. If the Parcel A Cost of Improvements exceeds One Million Ninety-Nine Thousand Six Hundred and 20/100 Dollars (\$1,099,600.20), then Purchaser may terminate this Contract; subject to Seller's right to recover damages as set forth in Section 13 of this Contract.
- B. **Parcel B.** The purchase price for Parcel B (the "Parcel B Purchase Price") shall be the sum \$440,000.00 plus the Parcel B Cost of Improvements (defined in Section 6 (c) of this Contract.
- C. **Parcel C.** The purchase price for Parcel C (the "Parcel C Purchase Price") shall be the sum \$220,000.00 plus the Parcel C Cost of Improvements (defined in Section 6 (c) of this Contract
- D. The Parcel A Purchase Price, the Parcel B Purchase Price and The Parcel C Purchase Price, less the amount deposited as earnest money, shall be paid by Seller to the Escrow Agent/Title Company on the Closing Date in good funds.

3. **SURVEY.** Within ninety (90) days following the date of execution of this Contract, Purchaser, at its sole cost and expense, may cause to be prepared and furnished to each

party a survey of the Property prepared by a Registered Public Surveyor acceptable to Alamo Title Company (the "Title Company"), which is the Title Company the parties agree to use for the closing of this transaction. The survey may reflect the following:

- (a) The total number of acres in the Property and the location of each and every recorded easement, right-of-way, road, street, alley, or railroad within the Property;
- (b) The perimeter lines of the Property;
- (c) The location of all apparent easements, improvements, streets, roads, creeks, and water flood zones on the Property;
- (d) All other natural monuments, improvements, or other objects on the Property; and
- (e) Field notes or other appropriate legal description of the Property.

Unless Seller or Purchaser object in writing to the survey within fifteen (15) days after same is furnished to such party, then said survey and legal description shall automatically supplement the description of the Property contained hereinabove and become a part hereof for all purposes.

4. **TITLE COMMITMENT.** Within ten (10) days following the date of execution of this Contract by both Purchaser and Seller, Purchaser, at its sole cost and expense, shall cause an Owner's Title Policy Commitment to be prepared by the Title Company covering the Property. Such Commitment shall set out or make reference to all instruments of record affecting the Property and shall be the basis for exceptions for the owner's title policy. If the Commitment discloses any exceptions to title other than the standard exceptions relating to claim of present occupants, discrepancies in area and boundary lines, and taxes for the current year, Purchaser shall have fifteen (15) days from receipt of such Owner's Title Policy Commitment and legible copies of all recorded instruments affecting the Property and recited as exceptions in the commitment, in which to notify Seller in writing of any objections to title. If Purchaser fails to so notify Seller, Purchaser shall be deemed to have waived such objections and shall proceed to close hereunder. If Purchaser notifies Seller and Seller does not cure said objections within a reasonable time, which in no event shall extend beyond thirty (30) days from the date notice of said objections is delivered to Seller, Purchaser shall have the option to (i) terminate this Contract in writing delivered to Seller and have its earnest money returned, in which event the parties shall have no further obligations hereunder other than Purchaser's obligation to pay Seller

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damages pursuant to Section 13 of this Contract, or (ii) waive the objections and proceed to close hereunder, in which event the Special Warranty Deed to be executed and delivered by Seller shall be made subject to the matter or matters so waived by Purchaser. Nothing herein contained shall obligate Seller to cure any objections to title if Seller does not desire to do so.

5. **INSPECTION PERIOD.** Purchaser shall have a period equal to ^{ONE HUNDRED TWENTY (120)} ~~sixty (60)~~ days from the date of execution of this Contract in which to complete its physical inspection and study of the Property ("Study Period") and an examination of all of the documents of Seller relating to same. During the Study Period, Purchaser or Purchaser' designated agents may, after two (2) days prior written notice, enter upon the Property to make surveys, environmental site assessments, borings, availability of utilities, drainage requirements, and such other tests as Purchaser deems necessary. Seller may be present during any such test. In the event this Contract shall not close, Purchaser shall restore the Property as close as reasonably possible to its original condition. Purchaser for any reason and in it's sole discretion may terminate this Contract by written notice to Seller on or before the expiration of said Study Period (prior to midnight local time), in which case this Contract shall terminate, subject to Purchaser's obligation to pay Seller damages pursuant to Section 13 of this Contract. If Purchaser fails to give notice of termination within the time described above, Purchaser shall be deemed to be satisfied with such inspection.

6. **CONDITIONS OF TRANSFER.** Purchaser agrees to the following conditions of the conveyance:

(a) Before the closing of this transaction, Seller agrees to plan, prepare, build, and construct on Parcel A certain recreation facilities according to the plans and costs conceptually represented on Exhibit E to this Contract, same being a part hereof for all purposes. Subsequent to the execution of this Contract and prior to initiation of construction, and from time to time after the initiation of construction Seller agrees to present to Purchaser more definite plans and specifications regarding the improvements to be constructed by Purchaser to Parcel A (the "Parcel A Improvements"). Subsequent to the execution of this Contract and prior to initiation of construction, Seller agrees to present to Purchaser a summary of the cost of the Parcel A Improvements (the "Parcel A Cost of Improvements"). Purchaser shall have the option at any time to terminate this Contract, in whole or in part, in writing delivered to Seller, subject to Purchaser's obligation to pay Seller damages pursuant to Section 13 of this Contract

(b) Before the closing of this transaction, Seller agrees to construct on Parcel B a perimeter fence, grading and drainage improvements (the "Parcel B Improvements"). The cost of the Parcel B Improvements is \$103,000.00 (the "Parcel B Cost of Improvements"). Purchaser shall have the option at any time to terminate this Contract, in whole or in part, in writing delivered to Seller, subject to Purchaser's obligation to pay Seller damages pursuant to Section 13 of this Contract.

(c) Before the closing of this transaction, Seller agrees to construct on Parcel C a perimeter fence, grading and drainage improvements (the "Parcel C Improvements"). The cost of the Parcel C Improvements is \$51,000.00 (the "Parcel C Cost of Improvements"). Purchaser shall have the option at any time to terminate this Contract, in whole or in part, in writing delivered to Seller, subject to Purchaser's obligation to pay Seller damages pursuant to Section 13 of this Contract.

(d) Seller agrees to plat/replat the Real Property before Closing.

7. **CLOSING.** The purchase and sale of the Property shall be closed in the offices of Alamo Title Company in Houston, Texas, on or before May 31, 2009 (the "Closing Date"). Purchaser shall not be obligated to close on the transaction and take title to the any parcel herein until the substantial completion of the Parcel A Improvements, the Parcel B Improvements and the Parcel C Improvements (collectively, the "Improvements"). If the Improvements are not substantially completed by the Closing Date, then the closing Date shall be automatically extended until the earlier (i) the date of substantial completion of the Improvements, or (ii) November 30, 2009.

Upon closing, Seller shall deliver to Purchaser:

(a) a Special Warranty Deed conveying good and indefeasible title in fee simple to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, restrictions, and other conditions, except for the following:

- (1) general real estate taxes and assessments for the year of closing and other subsequent years not yet due and payable;
 - (2) matters described in Paragraph 3 of this Contract;
 - (3) restrictions of record which have not been objected to; and
 - (4) taxes for the current and subsequent years.
- (b) possession of the Real Property; and
- (c) such other instruments, documents, and receipts as reasonably required by the Title Company to close the transaction.

Upon closing, Purchaser, at Purchaser' expense, shall deliver to Seller:

- (a) the Parcel A Purchase Price, the Parcel B Purchase Price and the Parcel C Purchase Price, less earnest money already paid; and
- (b) such other instruments, documents and receipts as reasonably required by Alamo Title Company to close the transaction.

8. **PRORATIONS.** If applicable, taxes for the current year, including all applicable rollback taxes, penalties, interest, maintenance fees, assessments, dues, and rents shall be prorated through the closing date. Rollback taxes shall be responsibility of the Seller. Taxes or assessments levied or that become due and owing on the Real Property subsequent to the date of closing, excepting any deferred taxes, agriculture rollback taxes, and assessments that would become due and owing by reason of any changed use of the Property, shall become the liability of Purchaser from and after closing and Purchaser hereby assume payment of same and covenants and agrees to pay same promptly if and when same become due and payable.

9. **CLOSING COSTS.** The costs of the survey, environmental assessment and other testing shall be paid by the Purchaser. The costs of platting/replatting shall be paid by the Seller. The percentage of the Title Policy cost attributed to the unimproved land shall be paid by the Seller. The percentage of the Title Policy cost attributed to the added value of the Improvements shall be paid by the Purchaser. All other closing costs, including escrow fees, Title Company fees, costs of preparing instruments, etc., shall be equally borne by Purchaser and Seller.

10. **WARRANTIES, COVENANTS, AND REPRESENTATIONS BY PURCHASER.** Purchaser acknowledges that Seller has not made and does not hereby make

any warranty, covenant, or representation of any kind or character whatever with respect to the Property, whether express or implied, other than those specifically expressed in this Contract. Purchaser hereby represent that they are not relying on any warranties, covenants, promises, guarantees, or representations made by Seller or anyone acting or claiming to act on behalf of Seller in purchasing the Property, other than those expressly provided for in this Contract.

11. **FURTHER ACTS.** Seller hereby covenants and agrees that from time to time Seller will execute and deliver, whether on or after the closing, on the request of Purchaser, all consummatory deeds, assignments, and other documents which may reasonably be required to confirm and assure Purchaser of their title and interest in the Property sold hereunder.

12. **REAL ESTATE COMMISSION.** Neither Seller nor Purchaser have made nor will make or enter into any agreement to pay or cause to be paid any fee, commission, or other compensation to any real estate agent, broker, or other person relating to the sale of the Property. Seller and Purchaser agree to protect and save the other harmless from any cost, expense, or liability of any kind or character whatsoever asserted against one party on account of the claim of any agent, broker, or other person claiming under any agreement made or asserted to have been made with the other party to pay or cause to be paid any fee, commission, or other compensation relating to the purchase of the Property.

13. **EARNEST MONEY, DEFAULT, AND REMEDIES.**

(a) Simultaneously with the execution hereof, Purchaser shall deposit with Title Company, as earnest money to bind this Contract, the sum of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) in cash or cashier's check (the "Earnest Money").

(b) In the event the sale of Parcel A is not consummated by reason of default on the part of Purchaser or if this Contract is terminated at any time by Purchaser, then Purchaser shall immediately pay to Seller all sums incurred by Seller for the Parcel A Cost of Improvements through the date of the default/termination.

(c) In the event the sale of Parcel B is not consummated by reason of default on the part of Purchaser or if this Contract is terminated at any time by Purchaser, then Purchaser shall immediately pay to Seller all sums incurred by Seller for the Parcel B Cost of Improvements through the date of the default/termination plus \$120,000.00 as the agreed upon opportunity loss value from the termination of the sale of Parcel B.

(d) In the event the sale of Parcel C is not consummated by reason of default on the part of Purchaser or if this Contract is terminated at any time by Purchaser, then Purchaser shall immediately pay to Seller all sums incurred by Seller for the Parcel C Cost of Improvements through the date of the default/termination plus \$60,000.00 as the agreed upon opportunity loss value from the termination of the sale of Parcel C.

If the Seller and Purchaser cause the title Company to pay the Earnest Money to Seller, then the Earnest Money shall be credited against the sums due to Seller. Purchaser is not entitled to any claim for an increased value in the Property due to the Improvements, because the Improvements are deemed to be for a specific purpose which otherwise add no value to the Property.

(e) In the event the transaction is not consummated because of Seller's refusal to convey the Property on the Closing Date, Purchaser shall have the option of (i) canceling this Contract, and in such event the Earnest Money shall be returned to Purchaser and all parties relieved of all further obligations under this Contract or (ii) Purchaser may enforce specific performance of Seller's obligations to sell the Property to Purchaser.

14. **ASSIGNMENT OF CONTRACT.** This Contract may not be assigned by either party without the express written consent of the other.

15. **MEMORANDUM OF CONTRACT.** Upon request of either party, both parties shall promptly execute a memorandum of this Contract suitable for filing of record in the Office of the County Clerk of Brazoria County, Texas.

16. **DISCLAIMER OF WARRANTIES.** Except as set forth herein, neither Seller nor Purchaser makes any warranties or representations of any kind or character, express or implied, with respect to the Property, its physical condition, or their obligations, or any other matter or thing relating to or affecting the same, and there are no oral agreements, warranties, or representations collateral to or affecting the Property, except as may otherwise be expressly set forth herein.

17. **NOTICE.** Any notices to be given by either party to this Contract shall be given in writing and may be effected by personal delivery or mailed by deposit of such into the care and custody of the United States Postal Service, certified, return receipt requested, and postage prepaid, as follows:

(a) To Purchaser: City of Friendswood
910 S. Friendswood Drive
Friendswood, Texas
Attn: City Manager

(b) To Seller: Wight Realty Interests, Ltd.
4300 Mandale
Alvin, Texas 77511

However, the parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the continental United States of America by giving at least five (5) days written notice to the other party as herein provided. Notice shall be effective and deemed given upon actual receipt or upon the third day after same is mailed as provided above, whichever is earlier.

18. **TIME OF ESSENCE.** Time is of the essence of this Contract.

19. **MODIFICATION OF THIS CONTRACT.** This Contract may not be modified or amended, except by a subsequent Contract in writing signed by Seller and Purchaser. Purchaser and Seller may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such condition or obligation, except as otherwise herein provided.

20. **BINDING EFFECT.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives, and assigns.

21. **ENTIRE AGREEMENT.** This Contract, including the Exhibits attached hereto, constitutes the entire agreement and understanding between the parties hereto and supersedes all prior and contemporaneous agreements and undertakings of the parties in connection herewith. No statements, agreements, or understandings, representations, warranties, or conditions not expressed in this Contract shall be binding upon the parties hereto, or shall be effective to interpret, change, or restrict the provisions of this Contract unless such is in writing signed by both parties hereto and by reference made a part hereof.

22. **SURVIVAL.** All covenants and agreements contained herein and intended to be performed subsequent to the closing of this Contract shall survive the execution and delivery of the Deed and other closing documents required hereby, and shall specifically not be deemed to be merged into or waived by any instrument of closing, but shall expressly survive and be binding upon Purchaser and Seller.

23. **GOVERNING LAW.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, and venue for any action hereunder shall be in Galveston County, Texas.

EXECUTED in multiple original counterparts, each of which shall be an original but which shall together constitute but one and the same Contract.

EXECUTED by SELLER effective the 23 day of September, 2008, which shall be deemed the effective and execution date hereof for all purposes.

SELLER:

WIGHT REALTY INTERESTS, LTD.

By Wight Management LLC, its general partner

By:



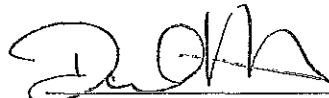
David Wight, President

EXECUTED by Purchaser this 30 day of September, 2008.

PURCHASER:

CITY OF FRIENDSWOOD

By:



David J. H. Smith, Mayor

ATTEST:



Deloris McKenzie, TMRC



