

AGREEMENT OF SALE AND PURCHASE

THE STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS           §

THIS AGREEMENT OF SALE AND PURCHASE ("Agreement") is made by and between PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION ("Seller") and EDMUND J. FLEMING, JR. ("Purchaser") and is as follows:

WITNESSETH:

I.

Sale and Purchase

1.01 The Property. Seller hereby agrees to sell and convey unto Purchaser, and Purchaser hereby agrees to purchase from Seller, for the price and subject to the terms, covenants, conditions and provisions herein set forth, the land which is described on Exhibit "A" and shown on Exhibit "B" ("Land") attached to this Agreement and incorporated herein by reference together with all improvements thereon and all of Seller's right, title and interest in and to all appurtenances thereto (the "Property"). Seller and Purchaser acknowledge that the description of the Land set out in Exhibits "A" and "B" may be legally insufficient for the purposes of supporting an action for specific performance or for the enforcement of other remedies under this Agreement. Notwithstanding any such insufficiency, Seller desires to sell the Property and Purchaser desires to purchase the Property. Because Seller and Purchaser mutually desire that the rights and obligations of both parties under this Agreement should be fully enforceable under the terms and provisions of this Agreement, Seller and Purchaser hereby both agree and acknowledge that: (i) they are experienced in transactions of the nature provided for in this Agreement; (ii) in fact, they are specifically familiar with the configuration and location of the Land; and (iii) each party waives any and all claims that the description of the Land set out in Exhibit "A" is deficient as a legal description or insufficient to support a cause of action for specific performance or for the enforcement of any other remedies under this Agreement. Additionally, once the Property is subdivided in accordance with Section 4.04 below, the Property description shall automatically be revised to the description of the platted lots comprising such Property.

1.02 Prior Contract. Purchaser acknowledges and understands that Seller does not currently have legal title to the Property, but does have the right to acquire the Property from Wells Fargo Bank, , N.A., a national banking association under the terms of that certain "Agreement of Sale and Purchase" dated March 8, 2006 (the "Prior Contract"). Seller's obligation to sell the Property to Purchaser is contingent upon Seller's ability to close the transaction under the Prior Contract. Seller agrees to use its best efforts to close the Prior Contract. In the event that Seller is unable to or does not close the Prior Contract on or before April 20, 2006, or such other date of closing specified under the Prior Contract, this Agreement will terminate and all Earnest Money (defined below) deposited by Purchaser hereunder shall be returned immediately to Purchaser and thereafter, neither party shall have any further rights, remedies, or obligations hereunder.

## II.

### Consideration

2.01 Purchase Price. The purchase price ("Purchase Price") to be paid by Purchaser to Seller for the sale and conveyance of the Property shall be the product of the number of gross square feet of surface area within the perimeter boundaries of the Land, as determined in connection with the preparation of the New Survey (hereinafter defined), multiplied by Four and No/100 Dollars (\$4.00).

2.02. Payment of the Purchase Price. The Purchase Price shall be payable in full in readily available funds at the Closing.

2.03. Earnest Money. In order to secure Purchaser's performance of this Agreement, on or before three (3) business days after Effective Date, Purchaser shall deposit with Heritage Title Company of Austin, Inc., 401 Congress Avenue, Suite 1500, Austin, Texas 78701, Attention: John Bruce, Closing Officer ("Title Company") the sum of \$1,000.00 ("Earnest Money.") The Earnest Money shall be placed in an interest bearing account, and all interest earned shall be added to and become a part of the Earnest Money. The Earnest Money shall be applied against the Purchase Price at the Closing. If the transaction is not closed, the Earnest Money shall be held and delivered by the Title Company in accordance with the terms and provisions of this Agreement.

## III.

### Title and Survey

3.01. Title Commitment. Purchaser acknowledges that Seller has obtained and caused to be delivered to Purchaser that certain "Commitment for Title Insurance" dated effective as of April 7, 2006 issued by the Title Company under its GF No. 00061194 (the "Title Commitment") pursuant to which the Title Company has committed to issue to Purchaser an owners policy of title insurance, on the standard form promulgated by the Department of Insurance of the State of Texas, providing title insurance coverage with respect to the Property in the amount of the Purchase Price (the "Title Policy"); and (b) copies of all title exception documents which are referenced in the Title Commitment (the "Title Review Documents"). All items which are reflected or disclosed on or within the Title Commitment and/or the Title Review Documents are referred to in this Agreement collectively as the "Title Review Items".

3.02. Survey. Purchaser acknowledges that Seller has provided to Purchaser, on or before the Effective Date of this Agreement, a copy of the existing survey of the parent tract that includes the Property (the "Existing Survey"). Purchaser shall, within ten (10) days after the Effective Date of this Agreement, obtain and cause to be furnished to both Seller and Purchaser, an on-the-ground survey of the Property (the "New Survey") prepared by a Registered Professional Texas Land Surveyor reasonably acceptable to Seller, the Title Company and any lender. The New Survey shall: (a) identify the Property by metes and bounds or platted lot description; (b) include the surveyor's certificate of the total number of gross square feet of surface area within the perimeter boundaries of the Land; (c) show that the New Survey was made and staked on the ground with corners permanently marked; (d) show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other waterways, fences, easements, and rights-of-way on the Property with all easements and rights-of-way referenced to their recording information; (e) show any discrepancies or conflicts in boundaries, any visible encroachments, and any portion of the Property lying within the 100-year floodplain as shown on the current Federal Emergency Management Agency map; and (f) contain the surveyor's certificate that the survey is true and correct. Purchaser shall provide an electronic copy of the New Survey to Seller on a CD ROM disk containing the Autocad Version of the New Survey for Seller's use in connection with the Plat Application (defined in Section 4.04 below). All items which are reflected or disclosed on the Existing Survey (or, if Purchaser

fails to timely deliver the New Survey, all items which would have been reflected or disclosed on the New Survey if the New Survey had been timely delivered by Purchaser) are referred to in this Agreement collectively as the "Survey Review Items".

3.03. Objections. On or before April 19, 2006, Purchaser shall review and approve the exceptions shown on the Title Commitment and any condition of the Property as revealed by the Existing Survey and/or the New Survey. In the event any exceptions shown on the Title Commitment and any condition of the Property as revealed by the Existing Survey and/or the New Survey are unacceptable to Purchaser for any reason, then Purchaser may terminate this Agreement on or before April 19, 2006 by written notice to Seller, whereupon the Title Company shall return the Earnest Money to Purchaser, and thereafter Seller and Purchaser shall be released and relieved of further obligations, liabilities or claims. The term "Permitted Exceptions" shall include and be limited to: (i) all exceptions reflected on Schedule B of the Commitment and all matters reflected on the Existing Survey and the New Survey. Items set forth on Schedule C of the Commitment that are Seller's responsibility shall not be considered to be Permitted Exceptions. Seller shall satisfy all requirements set forth on Schedule C of the Commitment that are Seller's responsibility and cause such items to be deleted from the Commitment at or prior to Closing.

3.04. Prohibited Uses. Seller and Purchaser acknowledge and agree that the Property will be restricted, at Closing, against certain prohibited uses more particularly described on Exhibit "D" attached hereto (the "Prohibited Uses"). The Property will be restricted from the Prohibited Uses by restrictive covenant retained in the Deed (defined below) at Closing (the "Restriction"). Notwithstanding anything to the contrary contained herein, Purchaser acknowledges and agrees that the Restriction is a Permitted Exception for all purposes hereunder.

3.05 Proof of Financing. Purchaser hereby represents and warrants that Purchaser has secured loan funds adequate to allow Purchaser to close the acquisition of the Property under the terms of this Agreement. The loan commitment evidencing such loan funds is attached hereto as Exhibit "E."

#### IV.

##### Review Period and Development Conditions

4.01. Review Materials. Purchaser agrees and acknowledges that Seller has provided to Purchaser, on or before the Effective Date of this Agreement, copies of all records of Seller specifically pertaining to the Property and all reports, plans, specifications, plats, surveys, documents, instruments or other items of any kind or nature which relate to the Property that are in Seller's possession. Prior and "back-up" earnest money contracts, appraisals, and privileged communications under the attorney/client privilege are excluded from and shall not be considered review materials hereunder. All materials and information required to be submitted by Seller to Purchaser are referred to as the "Review Materials".

4.02. Review Period. The period following the date of execution of this Agreement until April 19, 2006 is referred to as the "Review Period". During the Review Period Purchaser shall have the right to inspect the Property; to review the Review Materials, and any other documents or records pertaining to the Property; to conduct land use and engineering studies with respect to the Property; to conduct an environmental review of the Property; to conduct a market analysis of the Property; and to otherwise conduct a feasibility review and analysis with respect to the Property. Purchaser agrees to provide Seller copies of all third party studies, reports, surveys, tests and other materials generated in connection with Purchaser's feasibility study of the Property. Should Purchaser determine, in Purchaser's sole and absolute discretion, that Purchaser does not wish to close the purchase of the Property under the terms of

this Agreement, then Purchaser may terminate this Agreement by delivering written notice of such termination to Seller on or before the last day of the Review Period. If Purchaser elects to terminate this Agreement pursuant to the terms hereof, the sum of \$100.00 (the "Feasibility Study Payment") will be paid to Seller as consideration for the purchase option granted by Seller to Purchaser under this Agreement. Thereafter neither party shall have any further rights, liabilities or obligations under the Agreement.

4.03. Entry Upon Property. Purchaser, and Purchaser's agents, employees and representatives may enter upon the Property at any reasonable time prior to Closing for the purpose of inspecting the Property and conducting (at Purchaser's sole cost and expense) such tests and examinations as may be reasonably required by Purchaser. Purchaser shall not permit any liens to attach to the Property by reason of the exercise of Purchaser's rights under the Agreement. Purchaser agrees to indemnify and hold Seller harmless from and against any and all liens by contractors, subcontractors, materialmen or laborers performing such work and tests for Purchaser and from and against any and all claims for damages by third parties arising out of the conduct of such tests. In the event Purchaser shall terminate this Agreement during the Review Period, all then existing test and study reports shall be provided to Seller; this provision shall survive the termination of this contract.

4.04 Subdivision. Seller agrees, at Seller's sole cost and expense, to prepare and file a complete subdivision plat application (the "Plat Application") covering the property being acquired under the Prior Contract, including but not limited to the Property, with the City of Pflugerville. The Plat Application will reflect that the Property will be platted in two separate lots substantially in accordance with the survey attached hereto as Exhibit "B". Seller agrees to file the Plat Application with the City of Pflugerville as soon as reasonably possible after closing under the Prior Contract and to thereafter diligently prosecute the Plat Application for approval by the City of Pflugerville and any other required governmental authority with jurisdiction. Approval of the Plat Application by the City of Pflugerville and any other governmental authority with jurisdiction and recording of the approved subdivision plat in the Real Property Records of Travis County, Texas is referred to herein as "Plat Approval." Closing hereunder is contingent upon Plat Approval. In the event Seller has not secured Plat Approval on or before September 15, 2006 then this Agreement will terminate and the Earnest Money will be refunded to Purchaser and the parties will have no further rights or obligations hereunder except those that expressly survive termination.

## V.

### Closing

5.01. Closing Date. This transaction shall close at the Title Company's offices or other location acceptable to the parties on or before the date that is fifteen (15) days following the date of Plat Approval. The closing of this transaction is herein called "Closing", and the date for Closing is herein called the "Closing Date". Notwithstanding the foregoing, Purchaser shall have the right to extend the Closing Date for up to five (5) days to allow Purchaser to satisfy any requirements of Purchaser's lender by delivering written notice of such election to Seller prior to the Closing Date.

5.02. Seller's Closing Obligations. At the Closing, Seller shall, at Seller's sole cost and expense:

- (i) cause the Title Policy or an irrevocable commitment therefor to be issued to Purchaser containing only the applicable Permitted Exceptions and containing the modifications referred to hereinabove;
- (ii) execute and deliver to Purchaser a special warranty deed ("Deed") in form attached hereto as Exhibit "C", conveying to Purchaser good and indefeasible

title to the Property in fee simple absolute, subject only to the Permitted Exceptions;

- (iii) deliver to Purchaser physical possession of the Property;
- (iv) deliver evidence of Seller's authority to act in form reasonably satisfactory to Purchaser and the Title Company;
- (v) execute and deliver to Purchaser a "non-foreign" certificate sufficient to establish that withholding of tax is not required in connection with this transaction (provided, however, that if Seller fails to deliver such certificate or if Purchaser receives notice that such certificate is false, then there shall be withheld from the Purchase Price at Closing, a sum sufficient to satisfy all withholding requirements under the United States Internal Revenue Code and related regulations); and
- (vi) execute and deliver such other documents as are customarily executed by a seller in connection with the conveyance of similar property in Travis County, Texas, including all required closing statements, releases, affidavits, evidences of authority to execute the documents, certificates of good standing, corporate resolutions and any other instruments reasonably required by the Purchaser or the Title Company.

5.03. Purchaser's Closing Obligations. At the Closing, Purchaser shall: (i) deliver the Purchase Price to the Title Company for disbursement in accordance with the terms and provisions of this Agreement; (ii) deliver such evidence of Purchaser's authority to act as Seller and the Title Company may reasonably require for Closing; and (iii) execute and deliver such other documents as are customarily executed by a purchaser in connection with the conveyance of similar property in Travis County, Texas, including all required closing statements, releases, affidavits, evidences of authority to execute the documents, certificates of good standing, corporate resolutions and any other instruments reasonably required by the Seller or the Title Company.

5.04. Closing Costs. At or prior to the Closing, Seller shall pay: (i) the basic premium for the Title Policy; (ii) Seller's attorneys' fees; (iii) all costs incurred in connection with the preparation and recordation of any releases of existing liens against the Property; (iv) one-half (1/2) of any escrow or closing fee charged in connection with this Agreement; and (v) any other closing costs customarily paid by a seller of similar real property in Travis County, Texas, except as may be otherwise provided in this Agreement. Purchaser shall pay: (i) all charges for any endorsements to the Title Policy, all charges to modify the area and boundary exception in the Title Policy, and all inspection fees and other additional premiums or expenses of any kind or nature incurred in connection with the Title Policy; (ii) the full amount of all premiums for any mortgagee's title policy requested by Purchaser, including charges for any survey endorsement or tax deletion requested; (iii) Purchaser's attorneys' fees; (iv) all expenses related to the New Survey, and all expenses related to the Plat Approval, including any fiscal posting requirements; (v) all expenses relating to Purchaser's financing (if any), including any and all costs, expenses and fees required by Purchaser's lender; (vi) all recording fees charged in connection with any documents which are recorded pursuant to the terms of this Agreement, except for any releases of liens to be recorded by Seller; (vii) one-half (1/2) of any escrow fee charged in connection with this Agreement; and (viii) any other closing costs customarily paid by a purchaser of similar real property in Travis County, Texas, except as may otherwise be provided in this Agreement.

5.05. Prorations.

- (i) All normally and customarily proratable items, including, without limitation, real estate and personal property taxes shall be prorated as of the Closing Date, Seller being charged and credited for all of the same up to such date and Purchaser being charged and credited for all of the same on and after such date. If the actual amounts to be prorated are not known as of the Closing Date, the proration shall be made on the basis of the best information then available, and thereafter, when actual figures are received, a cash settlement will be made between Seller and Purchaser.
- (ii) Seller shall deliver to Purchaser at Closing evidence from each taxing authority to the effect that all taxes and assessments which are then due have been paid in full. Any additional ad valorem taxes relating to the year of Closing and/or prior years which arise or which could arise due to any change in usage or ownership of the Property (including without limitation any "rollback" or other additional taxes payable under the terms of Section 23.46 or Section 23.55 of the Texas Tax Code, as amended, or any similar laws) shall be borne and paid in full by the Seller at the Closing.

VI.

General Representations, Warranties and Covenants of Seller

6.01. Representations and Warranties. Seller hereby represents and warrants to Purchaser (to the best of Seller's knowledge) as follows, which representations and warranties shall be deemed made by Seller to Purchaser also as of the Closing Date:

- (i) There will be no parties in possession of the Property at Closing;
- (ii) There is no pending or threatened condemnation or similar proceeding or assessment affecting the Property, or any part thereof, nor to the best knowledge and belief of Seller is any such proceeding or assessment contemplated by any governmental authority;
- (iii) There are no actions, suits, arbitrations, claims or proceedings pending that could materially and adversely affect the ownership or operation of the Property or Seller's ability to perform hereunder;
- (iv) Seller has received no written notice of taking, condemnation, or assessment, actual or proposed, with respect to the Property, and none has occurred;
- (v) No actions, suits, investigations, litigation, bankruptcy, reorganization or other proceedings are pending at law or in equity or before any federal, state, territorial, municipal or other government department, commission, board, bureau, agency, courts or instrumentality, or to the best of its knowledge, are threatened against or affecting Seller which would prohibit Seller from selling the Property;
- (vi) The execution, delivery and performance by Seller of this contract does not and will not violate any provision of law, or any order, judgment or decree of any court or other governmental authority, or any contract or other instrument to which Seller is a party or by which Seller is bound, and will not result in a breach of or constitute a default under any

contract or other instrument which could result in the creation or imposition of any lien, charge or encumbrance of any kind upon the Property;

- (vii) Seller has received no notice from any agency regarding violations on the Property of applicable federal, state or local laws, regulations or ordinances concerning Hazardous Substances or any other environmental conditions. Hazardous Materials means any "hazardous substance" as defined in the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Superfund Amendments and Reauthorization Act, as amended, or the Texas Resource Recovery and Management Act, as amended, any other federal, state or local laws, ordinances and regulations pertaining to hazardous or toxic substances and substances which are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic or mutagenic, or which contain petroleum hydrocarbons, polychlorinated biphenyls, asbestos, asbestos containing material or urea formaldehyde; and Seller is not aware of any environmental hazards or conditions affecting the Property which would violate any federal, state or local statutes, regulations, ordinances or other requirements and more specifically, but without limitation, whether (1) the Property is or has ever been used for the storage or disposal of hazardous substances or materials or toxic waste, a dump site or landfill, or the housing of any underground tanks or drums; (2) any geological faults (surface or subsurface) lie on the Property; (3) threatened or endangered species or their habitat, as defined by the Texas Parks and Wildlife Department or the U.S. Fish and Wildlife Service, are on the property.
- (viii) Seller is not aware of any violation of applicable laws, ordinances, rules, regulations and requirements, including, without limitation, those pertaining to zoning, building, health, safety or environmental matters, promulgated by municipal, state or federal governments, hereinafter referred to as the "Authorities" with regard to the Property;
- (ix) Seller has received no notice that the Property is in violation of, or subject to any existing, pending, or threatened investigation or inquiry by any Authority or any remedial obligations under any applicable laws, statutes, regulations, rules, ordinances, codes, permits or orders of any governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, the State of Texas and its political subdivisions and all applicable judicial, administrative and regulatory decrees and judgments pertaining to the protection of health or safety or the environment, hereinafter referred to as the "Governmental Laws";
- (k) Seller shall convey the Property at closing: (1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the Purchase Price; and (2) with no parties in possession of any portion of the Property as lessees, tenants at sufferance, or trespassers.

Nothing in this Section 6.01 or the remainder of this Agreement shall imply or impose any duty of investigation or inquiry upon Seller. The warranties and representations of Seller set out in this Section 6.01, plus the special warranty of title to be included in the Deed are referred to in this Agreement collectively as the "Express Warranties". Purchaser acknowledges that Purchaser will independently cause the Property to be inspected on Purchaser's behalf during the Inspection Period and that Purchaser has not entered into this Agreement based on any representation, warranty, agreement, statement or expression of opinion by Seller or by any person or entity acting or allegedly acting for or on behalf of Seller, other than the Express Warranties. Subject to Plat Approval under Section 4.04 above, Purchaser understands, agrees and acknowledges that the Property is to be sold and accepted by Purchaser at the Closing AS IS, WHERE IS, WITH ALL FAULTS, IF ANY, AND WITHOUT ANY

REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, OTHER THAN THE EXPRESS WARRANTIES. This "AS IS" provision shall be contained in the Deed delivered at Closing.

VII.

Condemnation and Casualty

7.01 Condemnation. The obligations of Seller and Purchaser to close the sale of the Property shall not be affected by any condemnation proceedings or by any pending or threatened condemnation proceedings. However, at the Closing, the Purchase Price shall be reduced by the amount of any condemnation proceeds which have been received by Seller with respect to the Property between the Effective Date of this Agreement and the Closing Date and, in addition, Seller will assign to Purchaser all of Seller's rights to any condemnation proceeds which are payable to Seller, but have not yet been received by Seller, in connection with any condemnation of the Property occurring between the Effective Date of this Agreement and the Closing Date.

7.02 Casualty. The obligations of Seller and Purchaser to close the sale and purchase of the Property shall not be affected by any fire or other casualty. However, at the Closing, the Purchase Price will be reduced by the amount of any insurance proceeds which have been received by Seller with respect to any fire or casualty occurring at the Property between the Effective Date of this Agreement and the Closing Date and, in addition, Seller will assign to Purchaser all of Seller's rights to any insurance proceeds which are payable to Seller, but have not yet been received by Seller, in connection with any fire or other casualty occurring at the Property between the Effective Date of this Agreement and the Closing Date.

VIII.

Remedies

8.01. Purchaser's Remedies. If Seller fails or refuses to timely comply with Seller's obligations in any material respect or is unable to do so as the result of Seller's act or failure to act, Purchaser shall, as Purchaser's sole and exclusive remedy, have the right to either: (i) terminate this Agreement by giving Seller timely written notice of such election prior to or at Closing, and thereupon this Agreement shall terminate, and Purchaser shall be entitled to an immediate return of the Earnest Money and Seller and Purchaser shall be relieved and released of all further obligations, claims and liabilities; or (ii) enforce specific performance of Seller's obligations.

8.02. Seller's Remedies. If Purchaser fails or refuses to timely comply with Purchaser's obligations in any material respect or is otherwise in default, Seller, as Seller's sole and exclusive remedy, may either: (i) terminate this Agreement and recover the Earnest Money as liquidated damages, in full satisfaction of Seller's claims against Purchaser under the Agreement; or (ii) enforce specific performance of Purchaser's obligations. Seller and Purchaser agree that it is difficult to determine the actual amount of Seller's damages arising out of Purchaser's breach but the Earnest Money is a fair estimate of those damages which has been agreed to by the parties in a sincere effort to make the damages certain.

8.03. Attorney's Fees. In the event of any default by either Seller or Purchaser, the prevailing party in any dispute shall be entitled to recover from the non-prevailing party reasonable attorney's fees, expenses and costs of court.



IX.

Miscellaneous Provisions

9.01. Entire Agreement. This Agreement contains the entire agreement of the parties. There are no other agreements, oral or written, between the parties regarding the Property and this Agreement can be amended only by written agreement signed by the parties, and by reference made a part of this Agreement.

9.02. Binding Effect. This Agreement, and the terms, covenants, and conditions contained in this Agreement, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties.

9.03. Effective Date. The Effective Date of this Agreement and other similar references are deemed to refer to the date on which this Agreement has been fully executed, initialed, if applicable, dated by both parties, and received by the Title Company, as evidenced by the Title Company's signed acknowledgment below the signatures of Seller and Purchaser.

9.04. Notice. Any notice, communication, request, reply or advice (severally and collectively referred to as "Notice") in this Agreement provided or permitted to be given, made or accepted by either party to the other must be in writing. Notice may, unless otherwise provided herein, be given or served: (i) by depositing the same in the United States Mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; (ii) by depositing the same with Federal Express or another service guaranteeing "next day delivery", addressed to the party to be notified and with all charges prepaid; (iii) by delivering the same to such party, or an agent of such party; or (iv) by transmitting the same to the party to be notified by telecopy, provided that receipt for such telecopy is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above. Notices shall be effective on the date of delivery, deposit or transmittal in the manner described. For the purposes of notice, the addresses of the parties shall, until changed as provided below, be as follows:

Seller: Pflugerville Community Development Corporation  
100 West Main  
Pflugerville, TX 78660  
Attn: Rick Murphy  
Telephone No.: (512) 990-3725  
Telecopy No.: (512) 750-1824  
Email: rickm@cityofpflugerville.com

With required  
copy to: Gregg C. Krumme  
Armbrust & Brown, L.L.P.  
100 Congress, Suite 1300  
Austin, Texas 78701  
Telephone No.: (512) 435-2398  
Telecopy No. (512) 435-2360  
Email: gkrumme@abaustin.com

Purchaser: Edmund J. Fleming, Jr.  
7320 N. MoPac, Suite 201  
Austin, Texas 78731  
Telephone No. (512) 439-4057  
Telecopy No. (512) 439-4051  
Email: ed@naimanagementaustin.com

With required copy to: C. Daniel Wheelus  
3103 Bee Caves road, Suite 201  
Austin, Texas 78746  
Telephone No.: (512) 328-8111  
Telecopy No.: (512) 328-2080  
Email: dwheel@texas.net

The parties 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 United States of America by at least five (5) days written notice to the other party. If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period shall be extended to the first business day following such Saturday, Sunday or legal holiday.

9.05. Real Estate Commissions. 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 this transaction, and each agrees to and does hereby indemnify and hold the other harmless against the payment of any commission to any person or entity claiming by, through or under Seller or Purchaser, as applicable. Purchaser acknowledges that Purchaser has been advised by the above-stated broker, to have an abstract of title on the Property examined by an attorney or else to acquire an owner's policy of title insurance on the Property.

9.06. Time. Time is of the essence in all things pertaining to the performance of this Agreement.

9.07. Assignment. Purchaser may assign this Agreement, without the consent or prior approval of Seller to any entity owned or controlled by Purchaser, if: (i) Seller receives prior written notice of such assignment; (ii) Purchaser's lender approves such assignment; and (iii) Seller receives written evidence acceptable to Seller of such assumption of the Purchaser's obligations hereunder. Following any such assignment, Seller agrees to close this transaction with the assignee of Purchaser. Notwithstanding such assignment, the original Purchaser named herein shall remain liable for Purchaser's obligations through the Closing Date. Purchaser may not otherwise assign this Contract without the written consent of Seller.

9.08. Survival of Representations, Warranties and Obligations. The warranties and representations set forth in this Agreement shall not be deemed terminated at the time of Closing, nor shall they merge into the various documents executed and delivered at the time of Closing, but rather they shall survive Closing.

9.09. Severability. If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected, and it is also the intention of the parties to this Agreement that in lieu of each provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible, and be legal, valid, and enforceable.

9.10. Waiver. Any failure by a party to insist, or any election by a party not to insist, upon strict performance by the other party of any of the terms, provisions, or conditions of this Agreement shall not be deemed to be a waiver of any other term, provision, or condition, and such party shall have the right at any time or times to insist upon strict performance of any and all of the terms, provisions, and conditions.

9.11. Applicable Law and Venue. The construction and validity of this Agreement shall be governed by the laws of the State of Texas. Venue shall be in a court of appropriate jurisdiction in Travis County, Texas.

9.12. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs.

9.13. Grammatical Construction. Wherever appropriate, the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice versa.

9.14. Execution. To facilitate execution, this instrument may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of all parties be contained in any one counterpart. Additionally, the parties hereby covenant and agree that, for purposes of facilitating the execution of this instrument: (i) the signature pages taken from separate individually executed counterparts of this instrument may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature shall be deemed to be an original signature for all purposes. All executed counterparts of this instrument shall be deemed to be originals, but all such counterparts, when taken together, shall constitute one and the same agreement.

9.15 **WAIVER OF DECEPTIVE TRADE PRACTICES ACT. TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, PURCHASER HEREBY WAIVES ALL OF THE PROVISIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT (THE TEXAS BUSINESS AND COMMERCE CODE; SECTION 17.41, ET SEQ.), SAVE AND EXCEPT THE PROVISIONS OF SECTION 17.555 OF THE TEXAS BUSINESS AND COMMERCE CODE. PURCHASER WARRANTS AND REPRESENTS TO SELLER THAT (A) PURCHASER IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION AS TO ANY PROVISION OF THIS AGREEMENT OR AS TO ANY MANNER CONTAINED HEREIN, (B) PURCHASER IS A SOPHISTICATED ENTITY AND (C) PURCHASER IS REPRESENTED BY LEGAL COUNSEL OF PURCHASER'S OWN CHOOSING IN SEEKING, ACQUIRING, AND PURCHASING THE PROPERTY AND IN NEGOTIATING THE TERMS OF THIS AGREEMENT. FURTHER, THE CONSIDERATION FOR THE PURCHASE OF THE PROPERTY IS IN EXCESS OF FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00). THIS WAIVER IS MADE KNOWINGLY.**

9.16 Confidentiality. Seller and Purchaser agree that the terms of this Agreement shall be confidential and that neither Party will disclose the terms of this Agreement to any person or entity, except only as follows: (a) such disclosures as may be necessary to consummate the terms and provisions of this Agreement; (b) disclosures to the employees, agents, accountants or attorneys of the respective Parties; (c) disclosures to investors, lenders, purchasers or prospective investors, lenders or purchasers; and (d) disclosures as may be required by law, court order, governmental or regulatory reporting requirements, or other similar requirements.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXECUTED by the undersigned on the dates set forth below.

SELLER:

PFLUGERVILLE COMMUNITY  
DEVELOPMENT CORPORATION, a Texas non-  
profit corporation

By: Ronald Beyer  
Ronald Beyer, President

Date: 20 Apr '06

PURCHASER:

\_\_\_\_\_  
EDMUND J. FLEMING, JR.

Date: \_\_\_\_\_

RECEIPT OF EXECUTED CONTRACT

Heritage Title Company of Austin, Inc. acknowledges receipt of this Agreement, executed and, if needed, initialled, by both Seller and Purchaser this \_\_\_\_ day of \_\_\_\_\_, 2006.

Heritage Title Company of Austin, Inc.

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXECUTED by the undersigned on the dates set forth below.

SELLER:

PFLUGERVILLE COMMUNITY  
DEVELOPMENT CORPORATION, a Texas non-  
profit corporation

By: \_\_\_\_\_  
Ronald Beyer, President

Date: \_\_\_\_\_

PURCHASER:

  
\_\_\_\_\_

EDMUND J. FLEMING, JR.

Date: 4/18/06

**RECEIPT OF EXECUTED CONTRACT**

Heritage Title Company of Austin, Inc. acknowledges receipt of this Agreement, executed and, if needed, initialled, by both Seller and Purchaser this \_\_\_\_ day of \_\_\_\_\_, 2006.

Heritage Title Company of Austin, Inc.

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

EXHIBIT "A"

DESCRIPTION OF THE PROPERTY

A portion of Lots 3A and 4, SETTLERS RIDGE COMMERCIAL NO. 3, a subdivision in Travis County, Texas, according to the map or plat recorded in Volume 84, Page 141D, Real Property Records of Travis County Texas as depicted on the attached Exhibit "B" as Proposed Lot A and Proposed Lot B. Proposed Lot C, as depicted on the attached Exhibit "B", is being retained by Seller and is not included in the Property being sold to Purchaser.

EXHIBIT B

# Plat Configuration

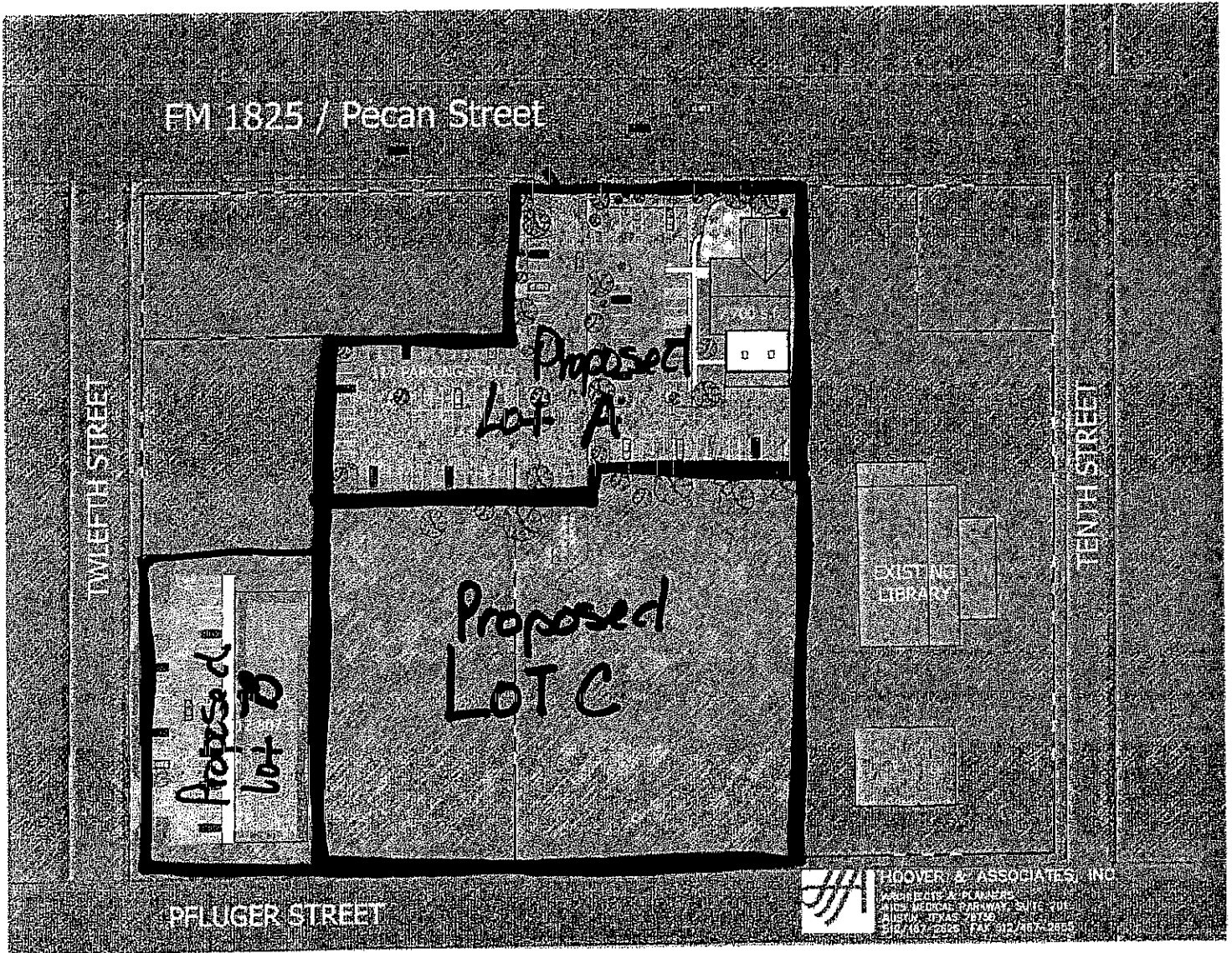


EXHIBIT "C"

**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.**

SPECIAL WARRANTY DEED

THE STATE OF TEXAS       §  
  §       KNOW ALL MEN BY THESE PRESENTS: THAT  
COUNTY OF TRAVIS       §

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION, a Texas non-profit corporation ("Grantor"), for the consideration hereinafter stated, to Grantor in hand paid by \_\_\_\_\_, a \_\_\_\_\_ ("Grantee"), whose mailing address \_\_\_\_\_ is \_\_\_\_\_, the receipt and sufficiency of which consideration is hereby acknowledged and confessed, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY, unto Grantee, subject to all of the reservations, exceptions and other matters set forth or referred to herein, the following described real property, together with all improvements thereon, if any (the "Property"), to-wit:

Lots \_\_ and \_\_\_\_\_, \_\_\_\_\_, a subdivision in Travis County, Texas according to the map or plat thereof recorded under Document No. \_\_\_\_\_, Official Public Records of Travis County, Texas.

**TO HAVE AND TO HOLD** the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, and Grantee's successors or assigns, forever; and, subject to all of the matters set forth or referred to herein, Grantor does hereby bind itself and its successors to **WARRANT AND FOREVER DEFEND** all and singular the Property unto Grantee, Grantee's 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; provided, however that this conveyance is made by Grantor and accepted by Grantee subject to: (a) all of the title exceptions revealed in or by the recorded documents and other matters listed on Exhibit "A" attached hereto and incorporated herein by reference; (b) all easements, rights of way, leases, reservations, mineral severances, covenants, conditions, restrictions and other title exceptions which are filed of record or are visible or apparent on the ground; (c) all regulations, restrictions, laws, statutes, ordinances, obligations or other matters which affect the Property and which are imposed by or exist by reason of any regulatory, governmental, or quasi-governmental districts, entities, agencies, authorities or other bodies of any kind or nature ("Governmental Authorities"); (d) all riparian rights, water rights, access rights or other rights of any kind or nature which affect the Property and which are held by or relate to any Governmental Authorities, the public generally or any persons or entities; (e) all prescriptive rights, discrepancies, conflicts, shortages in area, encroachments or overlapping of improvements, and all rights of adjoining landowners in or to any walls, fences or other improvements situated on or across any common boundary; (f) all standby fees, taxes and assessments by any taxing authority for the current and all subsequent years, and all taxes and assessments for prior years due to change in land usage or ownership, and all liens securing the payment of any of the foregoing; and (g) all reservations, mineral severances, restrictions, covenants, conditions, and other matters set forth or referred to in this deed. By acceptance of this deed, Grantee assumes and



agrees to pay and indemnifies and agrees to hold Grantor harmless from and against all ad valorem taxes relating to the Property, for the current and all subsequent years.

The Property is hereby restricted all of the uses set forth on Exhibit "B" attached hereto (the "Restriction"). The Restriction runs with the land for the benefit of Grantor and Grantor's successors and assigns (by written assignment) for a period of 30 years after the date hereof, at which time the Restriction will expire. In the event Grantor, or Grantor's successors and assigns, files a lawsuit to enforce this Restriction, Grantor (or its successors and assigns) will be entitled to recover its costs and attorneys fees. Enforcement of the Restriction is personal to Grantor and Grantor's successors and assigns (by written assignment) and does not run with land owned by Grantor as of the date hereof. The Restriction may be amended or modified by instrument executed by Grantee and Grantor (or Grantor's specific successors and assigns) and recorded in the Real Property Records of Travis County, Texas. Grantee accepts delivery of the Property subject to the Restriction. Grantee expressly understands, acknowledges and agrees that the Restriction shall be considered covenants running with the Property and shall bind Grantee, Grantee's successors and assigns and all present and future owners of the Property. No act or omission on the part of Grantor or Grantor's successors or assigns shall be or be construed to be a waiver of the operation or enforcement of any of the Restriction.

Grantee has received and accepted this special warranty deed and has purchased the Property "AS IS", "WHERE IS", AND "WITH ALL FAULTS" AND WITHOUT REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL (EXCEPT FOR THE WARRANTY OF TITLE EXPRESSLY SET FORTH HEREIN AND EXCEPT FOR THE LIMITED REPRESENTATIONS AND WARRANTIES SET FORTH IN THE AGREEMENT OF SALE AND PURCHASE DATED \_\_\_\_\_, 2006, BY AND BETWEEN GRANTOR AND GRANTEE HEREIN.

The consideration for this conveyance is as follows: Ten Dollars (\$10.00) and other good and valuable cash consideration to Grantor in hand paid by Grantee, together with that one certain promissory note dated of even date herewith in the original principal amount of \$ \_\_\_\_\_, made, executed and delivered by Grantee, payable to the order of \_\_\_\_\_ (the "Note"). The Note is by reference incorporated herein as fully and completely as if the same were here set forth verbatim. The vendor's lien, together with superior title remaining in Grantor as vendor (the "Vendor's Lien") is retained against the Property in favor of the holder of the Note ("Beneficiary") for the security of and until the full and final payment of the Note, when and whereupon this deed shall become absolute. The Vendor's Lien is hereby transferred to Beneficiary without recourse or warranty of any kind or nature. Payment of the Note is additionally secured by a lien on the Property (the "Deed of Trust Lien") created in that certain deed of trust dated of even date herewith, from Grantee to \_\_\_\_\_, Trustee (the "Deed of Trust"). In the event of default in the payment of the Note, or in the event of default in the performance of any of the covenants or conditions contained in the Deed of Trust which on the part of the grantor therein are to be kept and performed, then Beneficiary shall have the option to mature the Note and to foreclose the Vendor's Lien or the Deed of Trust Lien, or both of said liens, either under the power of sale contained in the Deed of Trust or by court proceedings, as Beneficiary may elect.

EXECUTED AND DELIVERED the \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_, a  
\_\_\_\_\_

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

RECEIVED, ACCEPTED AND AGREED  
TO BY GRANTEE:

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

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

THE STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_ by  
\_\_\_\_\_,  
\_\_\_\_\_, a \_\_\_\_\_, on behalf of  
said \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public Signature

THE STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_ by  
\_\_\_\_\_,  
\_\_\_\_\_, a \_\_\_\_\_, on behalf of  
said \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public Signature

EXHIBIT "D"

PROHIBITED USES

The Property may not be used for the following purposes: (i) primary use of any building as a warehouse; (ii) a distillation operation; (iii) a telecommunications tower; (iv) a mobile home or trailer park; (v) the drilling for and/or removal of subsurface substances; (vi) a kennel; (vii) a church; (viii) a pawn shop; (ix) a game room or amusement park (other than as an incidental use to another permitted use); (x) a skating rink; (xi) a pool hall or billiard parlor; (xii) a bowling alley; (xiii) a dancehall; (xiv) a saloon, (xv) a cocktail lounge, (xvi) a nightclub or bar (other than a restaurant which derives less than fifty percent (50%) of its annual gross revenues from the sale of alcoholic beverages); (xvii) an automobile body repair shop; (xviii) an automobile service center; (xix) an automobile parts store; (xx) a gas station; (xxi) a car wash; (xxii) a convenience store; (xxiii) a flea market; (xxiv) mini storage facility; or (xxv) adult book store or store selling primarily sexually explicit material.

EXHIBIT E

**LOAN COMMITMENT OF**  
**Grand Lodge, Order of the Sons of Hermann in the State of Texas**  
515 So. Saint Mary's Street • P.O. Box 1941 • San Antonio, Texas 78297 • (210) 226 9261

RE: Application for Mortgage Loan, dated April 4, 2006  
By: Edmund J. Fleming, Jr.

Site description: Two proposed tracts of land containing 1.78 acres (Tract 1) and 0.90 acres (Tract 2) out of a 5.59 acre tract in Pflugerville, Texas.

Grand Lodge has approved, subject to the conditions hereinafter set forth, the granting of a loan to the above named applicant in the amount of \$490,000.00, for a term of fifteen (15) years, bearing interest at the rate of seven and one half percent (7.50%) per annum, principal and interest to be payable at the office of the Grand Lodge in San Antonio, Texas, in monthly installments of \$4,542.36 or more, each, due and payable on the first day of each month, payments to be applied first to discharge of interest accrued and balance to reduction of principal. A matured principal and interest shall bear interest at the rate of eleven and one half percent (11.50%) per annum until paid.

The Note and/or Deed of Trust evidencing said loan shall contain, in addition to other provisions, the following provisions in substantially the form hereinafter stated:

1. Prepayment on the principal of this note, in whole or in part, is permitted, provided borrower pays an additional ninety (90) days unearned interest on all amounts so prepaid.
2. In the event Borrower, or any subsequent owner of the mortgaged premises, without first obtaining written approval of The Grand Lodge, should sell, transfer, or otherwise dispose of the mortgaged premises, or any part thereof, at any time before the lien securing the indebtedness is fully released and discharged, the Grand Lodge shall have the option to declare the entire indebtedness due and payable.
3. In the event any monthly payment shall become overdue for a period in excess of ten (10) days, a late charge of four percent (4%) of the monthly payment will be charged by the Grand Lodge for the purpose of defraying the expense incident to handling such delinquent payments.
4. An escrow fund must be created for the purpose of paying taxes and insurance premiums, the same to meet the approval of the Grand Lodge Attorney.
5. Fire and Extended Coverage Insurance, with Grand Lodge to be named as loss payee as its interests may appear, in an amount equal to or greater than the unpaid balance of the note with premium paid for at least one (1) year in advance of date of Note, on said security, in companies acceptable to the Grand Lodge, must be furnished at closing and all provisions with reference to insurance and taxes must meet the satisfaction of the Grand Lodge Attorney.
6. Interest paid or agreed to be paid shall not exceed the maximum amount permissible under applicable law and, in any contingency whatsoever, if the Grand Lodge shall receive anything of value deemed interest under applicable law which would extend the maximum amount of interest permissible under applicable law, the excessive interest shall be applied to the reduction of the unpaid principal of the Note or refunded to Borrower, and in no event shall interest contracted for herein exceed eighteen percent (18%) per annum.

Borrower must furnish an as built survey prepared by a licensed surveyor from a current survey made by him on the ground, showing the location of the land as well as all improvements, easements, restrictions, and encroachments thereon.

As additional security for the repayment of said Note, Borrower must execute a Deed of Trust and personal guarantees as the Grand Lodge Attorney shall require. The legal description of the Real Property shall be determined from the survey prepared and be that same property contained in Borrower's application.

The Note, Deed of Trust, and all other papers in connection herewith are to be upon Grand Lodge approved forms and must be prepared by the Grand Lodge Attorney only.

This loan shall be additionally secured by a valid and superior first lien upon the real and personal property offered as security. Borrower must furnish a Mortgage Policy of Title Insurance meeting the approval of the Grand Lodge Attorney at the cost of the Borrower at the time of closing.

Borrower agrees to pay to the Grand Lodge the sum of \$1,000.00 upon Borrower's acceptance of this commitment, which sum represents a non-refundable loan commitment fee. If the loan is not closed in accordance with the terms and conditions of this commitment, then the Grand Lodge may retain said sum as compensation for the issuance of this commitment and to compensate it for expenses incurred and loss of interest.

This loan may not be closed prior to the 1st day of May, 2006, but must be closed not later than the 31st day of May, 2006 and unless the same is closed not later than the above last date mentioned, this commitment is void and of no further force and effect (time of closing being of the essence hereof).

In the event, upon Borrower's request, the Grand Lodge sees fit to extend the time for closing, Borrower may be required to pay an extension fee upon closing, the amount of which is to be determined by computing interest at the loan rate for the extended time to the date of closing.

Borrower agrees to pay all expenses incurred in connection with this loan.

Copies of all easements, restrictions, leases, and any other matters relating to said Real Property must be furnished timely to the Grand Lodge Attorney prior to closing.

This commitment shall not be assigned, transferred, sold, or assumed without the express written consent of the Grand Lodge first had and obtained. This commitment is based upon the credit and credit history of Borrower and no others.

If new construction, or if property offered as security is to be remodeled, this loan will not be closed until the erection and completion of the improvements in accordance with the plans and/or specifications submitted to the Grand Lodge; and same must be completed within the time hereinabove provided for closing. The Grand Lodge shall have the sole right to determine if the improvements have been erected and completed in accordance with the plans and/or specifications.

Unless written acceptance hereof by Borrower is received, together with commitment fee, at the Grand lodge office in San Antonio, Texas, on or before noon of the 21st day of April, 2006, this commitment is void and of no further force and effect, time of acceptance being of the essence hereof. In addition, this commitment is not valid until approved and signed by the Grand President.

Stephen R. Prentiss [Signature] April 13, 2006  
Grand Vice President Date

APPROVED: [Signature] April 13, 2006  
Grand President Date

AGREED TO AND ACCEPTED: X [Signature] April 13, 2006  
Applicant(s) Date

Referred to Oscar Kuehner 1026 W. Hildebrand, San Antonio, Texas 78201 210-736-1641 210-732-2458  
Grand Lodge Attorney Address Telephone No. Fax No.

If applicant is a Corporation, furnish names of all Officers.

If Applicant is a Partnership, furnish names of all Partners.

A copy of this Commitment should be furnished to:

Name of Title Company Address

Name of Closer at Title Company Telephone No.

Rev. March, 2004