

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "**Contract**") is entered into by the KELLER INDEPENDENT SCHOOL DISTRICT ("**Purchaser**"), and HILLWOOD ALLIANCE RESIDENTIAL, L.P., a Texas limited partnership ("**Seller**").

ARTICLE 1 **AGREEMENT OF PURCHASE AND SALE**

1.1 **Agreement of Purchase and Sale.** For the consideration and upon and subject to the terms, provisions and conditions hereinafter set forth, Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, an approximately 13.37 acre tract of land situated in the City of Fort Worth, Tarrant County, Texas, generally shown on the attached **Exhibit "A"**, which is made a part hereof for all purposes, together with, all and singular, the rights and appurtenances pertaining to such real property (the "**Property**").

ARTICLE II **PURCHASE PRICE AND EARNEST MONEY**

2.1 **Purchase Price.** Purchase Price. The purchase price for the Property (the "Purchase Price") is \$2,038,390.00. Purchaser will pay \$20,000.00 (the "**Earnest Money**") within two business days after its execution hereof, which Earnest Money will be refundable to Purchaser until the expiration of the Inspection Period (defined herein). The Earnest Money will be paid into an interest bearing escrow account with Republic Title of Texas, Inc., 2626 Howell Street, Tenth Floor, Dallas, Texas 75204, Attention: Paulette Hubbard ("**Title Company**"), with interest accruing to Purchaser. Such interest shall be included in any refund of the Earnest Money hereunder. The timely delivery of the Earnest Money is a condition precedent to Seller's obligations hereunder, and the failure of Purchaser to timely deliver the Earnest Money as provided for herein shall at Seller's option cause this Contract to be terminated, and thereafter neither party shall have any further right or obligation under this Contract, unless expressly provided otherwise in this Contract. The Earnest Money, unless earlier returned to Purchaser or unless delivered to Seller as herein provided, at Purchaser's option either shall be applied to the Purchase Price or returned to Purchaser at the Closing. As used herein, the term "Immediately Available Funds" shall mean payment by cashier's check or certified check drawn on a national banking association acceptable to Seller or by wire transfer of Immediately Available Funds.

ARTICLE III **CONTRACT CONSIDERATION**

3.1 **Contract Consideration.** Contemporaneously with the execution and delivery of this Contract, Purchaser has delivered to Seller and Seller hereby acknowledges the receipt of a check in the amount of One Hundred Dollars (\$100.00) ("**Option Consideration**"), which amount the parties bargained for and agreed to as consideration for Purchaser's exclusive right to inspect and purchase the Property pursuant to this Contract and for Seller's execution, delivery and performance of this Contract. The Option Consideration is in addition to and independent of any other consideration or payment provided in this Contract, is nonrefundable, and it is fully earned and shall be retained by Seller notwithstanding any other provision of this Contract.

ARTICLE IV

DELIVERY OF SURVEY AND TITLE COMMITMENT; SURVEY AND TITLE REVIEW

4.1 **Items to be Delivered by Seller.** Within 20 days after the Effective Date, Seller shall provide Purchaser, at Seller's sole cost and expense with (a) a current commitment for the issuance of an owner policy of title insurance to Purchaser from the Title Company, including true, correct and, to the extent reasonably available from the public records, legible copies of all instruments referred to in the commitment as conditions or exceptions to title to the Property, (collectively, the "**Title Commitment**") and (b) a current boundary survey of the Property prepared by a duly-licensed Texas land surveyor (the "**Survey**"). The legal description in the Survey, if different from the attached **Exhibit "A"**, shall automatically be substituted as a new **Exhibit "A"** to this Contract. In addition, within 10 days after the Effective Date, Seller shall deliver to Purchaser (or make available to Purchaser at Seller's office) copies of any existing environmental and/or engineering studies relating to the Property to the extent available and within Seller's actual possession (collectively, the "**Property Documents**"). The Property Documents are made available without representation by Seller or recourse to Seller, and Purchaser relies on the Property Documents at its own risk. Without limiting the generality of the foregoing, Purchaser acknowledges that Seller has made no representations (express or implied) regarding the accuracy of the Property Documents, the qualifications of the parties preparing such information or the conclusions set forth therein. Notwithstanding the foregoing, if Purchaser fails to acquire the Property for any reason (other than default by Seller), Purchaser shall pay for the cost of the Survey (which amount shall be deducted from the Earnest Money before it is refunded to Purchaser if Purchaser is entitled to receive the Earnest Money pursuant to the terms hereof, or if the Earnest Money has previously been refunded to Purchaser, Purchaser shall pay for the cost of the Survey upon being presented with an invoice therefor), even though such payment obligation is not repeated in the provisions of this Contract providing for the return of the Earnest Money. Notwithstanding anything to the contrary contained herein, Purchaser's obligation under the immediately preceding sentence shall survive the termination of this Contract.

4.2 **Title Review Period.** Purchaser shall have a period of 20 days from the date Seller receives the later of the Title Commitment or Survey to review the state of Seller's title to the Property (the "**Title Review Period**"). If the Survey or Title Commitment reflects or discloses any defect, exception or other matter affecting the Property ("**Title Defects**") that is unacceptable to Purchaser for any reason whatsoever, then, prior to the expiration of the Title Review Period, Purchaser may provide Seller with written notice of its objections. Seller may use its reasonable efforts to remove or cure the Title Defects, but shall not be required to incur any costs or to institute litigation in doing so. If Seller does not cure any or all of the Title Defects then, prior to the expiration of the Inspection Period (hereinafter defined), Purchaser, as its sole remedy may terminate this Contract by giving written termination notice to Seller. Notwithstanding anything to the contrary in this Contract, if Purchaser fails to terminate this Contract by giving written termination notice to Seller prior to the expiration of the Inspection Period, then any Title Defects that Seller has not cured and which are shown on the Survey or the Title Commitment as such may have been updated as of the expiration of the Inspection Period shall be deemed to be waived and accepted by Purchaser and shall be "**Permitted Exceptions**". If Purchaser terminates this Contract as provided for herein, the Title Company shall promptly return the Earnest Money to Purchaser, and neither Seller nor Purchaser thereafter shall have any further right or obligation under this Contract unless expressly

provided otherwise in this Contract. In no event may the failure of Seller to deliver a Title Commitment or a Survey satisfying the requirements of **Article IV** extend the period for review of such Title Commitment or Survey beyond the Inspection Period, and Purchaser's sole remedy for any such failure shall be to terminate this Agreement prior to the expiration of the Due Diligence Period in accordance with the provisions of **Article IV**. Purchaser shall notify Seller in writing of any failure of the Title Commitment or Survey to satisfy the requirements of **Article IV** during the Title Review Period, and if Purchaser fails to do so, the Title Commitment and Survey will be deemed to satisfy such requirements. If Seller fails to timely deliver a Title Commitment or a Survey but such Title Commitment or Survey otherwise satisfies the requirements of **Article IV**, then the Due Diligence Period shall, solely for the purpose of addressing Title Defects reflected in such late delivered Title Commitment or Survey, be extended on a day-for-day basis by the number of days that such Title Commitment or Survey was late.

ARTICLE V **INSPECTION**

5.1 **Inspection Period.** Purchaser shall have the period of 60 days from the Effective Date (the "**Inspection Period**") in which to review the Property and to determine whether the Property is suitable for Purchaser's needs. In the event that Purchaser, in its sole and absolute discretion and for any reason whatsoever, determines that the Property is not suitable for its needs, then Purchaser may terminate this Contract by giving written termination notice to Seller on or prior to expiration of the Inspection Period, whereupon the Title Company shall promptly return the Earnest Money to Purchaser, and neither Seller nor Purchaser thereafter shall have any further right or obligation under this Contract unless expressly provided otherwise in this Contract. If Purchaser does not terminate this Contract as provided above, Purchaser shall be deemed to have waived its right to terminate this Contract under this section and to have accepted the Property, the Title Commitment (as such may have been modified pursuant to **Article IV** above) and the Survey and the Earnest Money shall become nonrefundable to Purchaser.

ARTICLE VI **REPRESENTATIONS AND COVENANTS**

6.1 **Representations of Seller.** Seller makes the following representations as of the date of this Contract:

(a) To Seller's current actual knowledge, (i) no condemnation proceedings, eminent domain proceedings or similar actions or proceedings are now pending or threatened against the Property and (ii) there are no proceedings pending or threatened for rezoning or otherwise changing the land use of the Property.

(b) To Seller's current actual knowledge, there is no condition existing with respect to the Property or the operation thereof which violates any law, rule, regulation, or ordinance. Seller has not received notice, written or otherwise, from any governmental or quasi-governmental agency requiring the correction of any condition with respect to the Property by reason of a violation of any law or otherwise.

(c) To Seller's current actual knowledge, Seller has received no notice of any legal actions, suits, or other legal or administrative proceedings, pending or threatened, against or affecting the Property.

(d) To Seller's current actual knowledge, the execution and delivery of this Contract, the consummation of the transaction herein contemplated and the compliance with the terms of this Contract will not conflict with, or with or without notice or the passage of time, or both, result in a breach of, any of the terms or provisions of, or constitute a default under any judgment, order or decree of any court having jurisdiction over Seller or the Property.

(e) Seller is duly and legally authorized to enter into this Contract and to carry out and perform all covenants to be performed by it hereunder, and its right to execute this Contract is not limited by the existence of any other contracts or agreements whatsoever. The joinder of no person or entity other than Seller will be necessary to convey the Property fully and completely to Purchaser at Closing. Seller is duly authorized and qualified to conduct business in the State of Texas.

The term "Seller's current actual knowledge" and terms of similar import shall mean the actual current (and not constructive) knowledge of Steven Howard without any independent inquiry or investigation by such person, and any reference to Seller's receipt of "notice" shall mean the receipt of notice by Steven Howard; provided, however, that Steven Howard shall have no personal liability in connection with any representations or warranties of Seller.

6.2 Representations of Purchaser.

(a) Purchaser represents to Seller that (a) it has authority to enter into this transaction and the person signing on behalf of Purchaser is authorized to do so, and (b) Purchaser has been represented by counsel selected solely by Purchaser and is not in a disparate bargaining position relative to Seller.

(b) Notwithstanding anything herein to the contrary, any breach by Purchaser of any of the foregoing representations or warranties shall constitute a default by Purchaser hereunder, and Seller may thereupon, at its option, terminate this Contract by giving written notice thereof, in which event the Earnest Money shall be paid to Seller as liquidated damages, and neither Purchaser nor Seller shall have any further rights or liabilities hereunder, except as otherwise provided herein

6.3 Covenants and Agreements. Seller and Purchaser covenant and agree as follows:

(a) Provided this Contract has not terminated, Seller shall give Purchaser and Purchaser's agents and representatives access to the Property in order to make such inspections, surveys, test borings, soil analyses and other tests and surveys thereon as Purchaser, in its reasonable discretion, shall deem advisable. The cost and expenses of Purchaser's investigation shall be borne solely by Purchaser.. Prior to any entry onto the Property by Purchaser or its agents or contractors, Purchaser or its agents shall obtain and deliver to Seller an insurance certificate (in form and substance reasonably acceptable to Seller) evidencing that Purchaser shall have in full force and effect during the term of this Contract a policy of general liability insurance with limits of not less than \$1,000,000 combined single limit, covering liabilities for personal injury, death and property damage arising out of activities on or about the Property by Purchaser and its agents and contractors, which policy shall: (i) name Seller and its mortgagee (as disclosed by Seller to Purchaser) as additional insureds; (ii) be underwritten by an insurance company licensed to do business in the State of Texas

and having a Best's rating of A/VII or better; and (iii) not be cancelable or subject to amendment without at least 30 days' advance written notice to Seller. Purchaser shall use its best efforts to minimize damage to the Property and shall cause the Property to be restored to substantially the condition existing immediately prior to entry thereon by Purchaser, its agents, representatives and contractors if the Closing does not occur (which obligation shall survive the termination of this Contract and shall not be subject to the limitation of remedies in **Section 9.2** of this Contract).

(b) At the Closing, Seller shall deliver to Purchaser an affidavit in compliance with Section 1445 of the Internal Revenue Code and applicable regulations stating, under penalty of perjury, Seller's United States taxpayer identification number and that Seller is not a "foreign person" as that term is defined in Section 1445 ("**Non-Foreign Affidavit**").

ARTICLE VII **CONDEMNATION**

7.1 Condemnation. If, prior to the Closing, condemnation proceedings are commenced with respect to a material portion of the Property, Seller shall promptly notify Purchaser, and Purchaser may terminate this Contract by giving a written termination notice to Seller within ten days after receiving such notice from Seller. The term "material portion" for the purposes of the immediately preceding sentence shall mean five percent or more of the gross acres contained in the Property. If Purchaser does not terminate this Contract as provided above, any award in condemnation shall become the property of Seller, and if the award is received by Seller prior to the Closing, the Purchase Price shall be reduced by the amount Seller receives from such condemnation award, and the condemned land shall not be included in the Deed or be part of the Property. In the event of a termination by Purchaser, the Earnest Money shall be immediately refunded to Purchaser, and Seller and Purchaser thereafter shall have no further rights or obligations under this Contract unless expressly provided otherwise in this Contract. If Purchaser closes under this Contract prior to any condemnation award being paid to Seller, the Purchase Price shall not be reduced as the result of such condemnation, but Purchaser shall be entitled to the condemnation award.

ARTICLE VIII **CLOSING**

8.1 Time and Place. The sale and purchase of the Property shall be consummated at a closing (the "**Closing**") to be held at the offices of the Title Company. The Closing shall occur at 10:00 a.m. Central Time on the date that is 60 days after the Effective Date (the "**Closing Date**"); provided, however, in the event that the parties agree that the Closing shall be held on a date that is prior to the expiration of the Inspection Period, the Inspection Period shall automatically expire on such earlier Closing Date.

8.2 Items to be Delivered by Seller at the Closing. At the Closing (except as otherwise provided below), Seller shall deliver or cause to be delivered to Purchaser, at Seller's sole cost and expense except as otherwise provided in this **Section 8.2**, each of the following items:

(a) A special warranty deed duly executed and acknowledged by Seller, in form of attached **Exhibit "B"** (the "**Deed**") and incorporated herein by reference, conveying unto Purchaser good and indefeasible fee simple title to the Property, free

and clear of any liens, encumbrances, easements or other matters affecting title to the Property except the Permitted Exceptions.

(b) An Owner's Policy of Title Insurance (the "**Title Policy**"), delivered in due course by the Title Company after the Closing, issued by the Title Company on the standard form in use in the State of Texas, insuring good and indefeasible fee simple title to the Property in the Purchaser in a face amount equal to the Purchase Price and containing no exceptions except the Permitted Exceptions and the standard printed exceptions therein, except:

(i) if requested by Purchaser, the exception relating to discrepancies, conflicts or shortages in area or boundary lines or any encroachment or overlapping of improvements which a survey might show shall be deleted except for "shortages in area" with the premium for such deletion to be paid for by Purchaser; and

(ii) the exception as to standby fees and taxes shall be limited to standby fees and taxes for the year of Closing and subsequent years, and subsequent assessments for prior years due to changes in land usage or ownership; and

(e) A Non-Foreign Affidavit as set forth in **Section 6.3(b)**.

8.3 Items to be Delivered by Purchaser at the Closing. At the Closing, Purchaser shall deliver or cause to be delivered to Seller the Purchase Price (subject to the credit of the Earnest Money if Purchaser elects to apply the Earnest Money to the Purchase Price) in all cash or other Immediately Available Funds.

8.4 Adjustments and Prorations. At the Closing, the following items shall be adjusted or prorated between Seller and Purchaser:

(a) Ad valorem taxes and assessments for the Property for the current calendar year shall be prorated as of the Closing Date, and Seller shall pay to Purchaser in cash at the Closing Seller's pro rata portion of such taxes and assessments. Seller's pro rata portion of such taxes and assessments shall be based upon taxes and assessments actually assessed for the current calendar year or, if for any reason such taxes and assessments for the Property have not been actually assessed, such proration shall be based upon the amount of such taxes and assessments for the immediately preceding calendar year and later adjusted by cash settlement when actual ad valorem taxes and assessments for the year of the Closing are assessed. When actually assessed by the applicable taxing authority, Seller shall, within 15 days after receipt of a written request from Purchaser therefor, along with copies of all relevant statements, pay to Purchaser 100% of any tax assessment of the Property for periods prior to the Closing Date due to changes in land usage or ownership ("Rollback Taxes"). Purchaser shall pay when due 100% of Rollback Taxes for periods after the Closing Date.

(b) Except as otherwise provided herein, each party shall pay its share of all other closing costs as is normally paid by a seller or purchaser, respectively, in a transaction of this character in Tarrant County, Texas.

(c) The agreements as to payments, prorations and adjustments in this section shall survive the Closing. In the event that any adjustments are to be made pursuant to this section after the Closing, then the party who is entitled to additional monies shall invoice the other party for such additional amounts as may be owing, and such amounts shall be paid within ten days from receipt of the invoice.

ARTICLE IX **REMEDIES UPON DEFAULT**

9.1 Default by Seller. In the event of a breach or default by Seller prior to Closing in the performance of its covenants, representations or warranties under this Contract (except as a result of a default by Purchaser), and the continuation of such breach or default for ten days after written notice thereof has been given by Purchaser and received by Seller (the "**Notice and Cure Period**"), Purchaser shall have the right, as its sole and exclusive remedy with respect to such breach or default, to terminate this Contract by giving written notice thereof to Seller, whereupon neither party shall have any further rights or obligations under this Contract except as specifically provided otherwise in this Contract, and the Title Company promptly shall deliver the Earnest Money to Purchaser, unless Purchaser elects (by giving written notice (the "**Election Notice**") to Seller within 90 days after the expiration of the Notice and Cure Period and by filing a lawsuit for specific performance within two years and one day after the expiration of the Notice and Cure Period), to enforce specific performance of Seller's obligations under this Contract and accept such title as Seller is able to convey in which event Purchaser's pursuit of such specific performance remedy shall be Purchaser's sole and exclusive remedy; provided, however, with respect to (A) any title exceptions which existed prior to the effective date of the Title Commitment and which are discovered by the Title Company for the first time after Purchaser has received the Title Commitment, and (B) any title exceptions which arise after the effective date of the Title Commitment which are not caused by Seller or which are not Permitted Exceptions, Seller shall reasonably cooperate with the Title Company in the elimination of such title exceptions (but shall not be required to incur costs or to institute litigation to eliminate said title exceptions), the Closing shall occur as scheduled, and said title exceptions (to the extent not eliminated) shall be additional "Permitted Exceptions", unless Purchaser, as its sole and exclusive remedy in lieu of the specific performance remedy provided above, terminates this Contract by giving written notice to Seller by no later than the earlier of (i) five days after the Title Company or Seller gives Purchaser written notice of such title exceptions or (ii) the Closing Date, in which event Purchaser shall receive a refund of the Earnest Money, and the parties hereto shall have no further right or obligation to each other under this Contract except as otherwise expressly provided in this Contract. Notwithstanding the foregoing (i) Seller shall not be entitled to receive written notice and a ten-day opportunity to cure in connection with Seller's default in closing the transaction contemplated hereby on the Closing Date pursuant to **Section 8.1** and (ii) in case of such default by Seller in failing to timely close, the Election Notice must be given and any lawsuit for specific performance must be filed (if Purchaser elects to pursue such remedy) within 30 days following the Closing Date provided for in **Section 8.1**. Notwithstanding anything to the contrary contained herein, Purchaser's failure to give the Election Notice and file a lawsuit for specific performance within the applicable time periods set forth above shall constitute an irrevocable election by Purchaser not to pursue its remedy of specific performance, in which event this Contract shall automatically terminate, the Title Company promptly shall deliver the Earnest Money to Purchaser, and neither party shall have any further rights or obligations under this Contract except as otherwise expressly provided in this Contract.

Except as otherwise provided in **Section 9.3**, in no event shall Seller be liable to Purchaser for damages (whether actual, speculative, consequential, punitive or otherwise) for a breach or default in the performance of Seller's covenants under this Contract.

9.2 Default by Purchaser. In the event that performance of this Contract is tendered by Seller and the sale is not consummated through default by Purchaser, then Seller, as Seller's sole and exclusive remedy, shall have the right to terminate this Contract by giving written notice thereof to Purchaser, whereupon the Title Company shall deliver the Earnest Money to Seller, free of any claims by Purchaser, as liquidated damages, and neither party hereto shall have any further rights or obligations under this Contract except as specifically provided otherwise in this Contract. The Earnest Money is a good faith estimate of actual damages that Seller would suffer and shall be liquidated damages for default of Purchaser because of the difficulty, inconvenience and uncertainty of ascertaining Seller's actual damages for Purchaser's failure to close this Contract.

9.3 Damages. If the Closing occurs, each party shall have the right to pursue its actual damages against the other party (i) for a breach of any covenant contained herein that is performable after or that survives the Closing (including the indemnification obligations of the parties contained this Contract), and (ii) for a breach of any representation or warranty made by the other party in this Contract (subject to the limitation on survival set forth in **Section 6.1** above), but only to the extent that the non-breaching party had no knowledge of such breach of representation or warranty as of the Closing Date. If the Closing does not occur, (A) each party shall have its respective rights and remedies under **Section 9.1** and **Section 9.2**, as applicable, and (B) each party shall have all available remedies against the other party for a breach of the other party's obligations contained in this Contract that are expressly provided herein as surviving the termination of this Contract, but neither party shall have any right to pursue any remedy against the other party on account of a breach of the other party's representations and warranties set forth herein. In no event shall either party be liable for any speculative, consequential or punitive damages.

ARTICLE XI **MISCELLANEOUS**

10.1 Notices. Any notice, demand or other communication required to be given or to be served upon any party hereunder shall be void and of no effect unless given in accordance with the provisions of this section. All notices, demands or other communications must be in writing and delivered to the person to whom it is directed, either (i) in person or (ii) delivered by a reputable delivery service that provides a delivery receipt. Any notice, demand or other communication shall be deemed to have been given and received when delivered to the below stated address of the party to whom it is addressed. All notices, demands and other communications shall be given to the parties hereto at the following addresses:

If to Seller:
Hillwood Alliance Residential, L.P.
13600 Heritage Parkway
Suite 200
Ft. Worth, Texas 76177

Attention: Steven Howard

If to Purchaser:
Keller Independent School District
350 Keller Parkway
Keller, Texas 76248

Attention: _____

With a copy to:

Hillwood Development Company, LLC
Three Lincoln Centre
5430 LBJ Freeway, Suite 800
Dallas, Texas 75240

Attention: Scott Norman

With a copy to:

Keller Independent School District
Brackett & Ellis
100 Main Street
Fort Worth, Texas 76102

Attention: Thomas E. Myers

Any party entitled to receive notices hereunder may change the address for notice specified above by giving the other party ten days' advance written notice of such change of address.

10.2 Survival. All covenants in this Contract providing for performance after the Closing shall survive the Closing.

10.3 Binding Contract. This Contract shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns. Purchaser may assign this Contract to a related affiliate, party or entity only upon written notice to Seller and upon reasonable evidence of Purchaser's affiliation with the assignee. This Contract may be assigned by Seller to one or more successor owners of the Property or a portion thereof and, upon the assignment of this Contract by Seller, Seller shall have no further liability hereunder provided that the assignee assumes the obligations of Seller under this Contract.

10.4 Interpretation and Applicable Law. **THIS CONTRACT SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.** The parties consent and agree that venue for any action will be exclusively in Texas state court in Tarrant County, Texas. Where required for proper interpretation, words in the singular shall include the plural, and the masculine gender shall include the neuter and the feminine, and vice versa. The descriptive headings of the articles, sections and paragraphs contained in this Contract are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof. The term "including," and compounds of the word "include," when preceding a list shall be deemed to mean "including but not limited to."

10.5 Amendment/Waiver. Except as provided above with respect to the automatically substituted **Exhibit "A"** Property description, this Contract may not be modified or amended, except by an agreement in writing signed by the Seller and the Purchaser. The parties 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 conditions or obligations.

10.6 Attorneys' Fees. In the event either party files a lawsuit in connection with this Contract or any provisions contained herein, then the party that prevails in such action shall be entitled to recover from the non-prevailing party, in addition to all other remedies or damages as limited herein, reasonable attorneys' fees and costs of court incurred in such lawsuit, as provided by Texas Local Government Code §271.159. This covenant shall survive the Closing or termination of this Contract.

10.7 Entire Agreement. This Contract (as amended pursuant to **Section 4.1)** constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in

connection therewith. Unless set forth in this Contract, no representations, warranties, covenants, agreements or conditions shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Contract.

10.8 Multiple Counterparts. This Contract may be executed in two or more separate counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Signatures on counterparts of this Contract that are transmitted by fax shall be deemed effective for all purposes.

10.9 Dates. If, pursuant to this Contract, any date indicated herein falls on a holiday or a Saturday or Sunday, the date so indicated shall mean the next business day following such date. The term "holiday" shall mean any day on which state or national banks are not open for business in the State of Texas. The "**Effective Date**" of this Contract shall be the date on which it is fully executed by the last of Seller or Purchaser to do so.

10.10 Brokers. Seller shall be responsible for the payment of the brokerage fee or commission, payable only upon Closing, to Howe/Wood Co. pursuant to a separate written agreement. Each party represents and warrants to the other that, except for the broker identified in the immediately preceding sentence, no brokers or finders have been engaged by it, respectively, in connection with the transaction contemplated by this Contract or, to its knowledge, is in any way connected with this transaction.

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

10.12 Time of Essence. Purchaser and Seller acknowledge that time is of the essence in this Contract.

10.13 Acceptance. This document constitutes an offer by Purchaser to purchase the Property from Seller on the terms set forth herein. Seller shall have until 5:00 o'clock p.m., on the ____ day of _____, 2006, Dallas, Texas, time, to sign and return a fully signed original of this Contract to Purchaser; otherwise the offer set forth in this Contract shall be automatically revoked and of no further force or effect.

10.14 1031 Treatment as Like-Kind Exchange. Purchaser and Seller acknowledge and agree that Seller may desire to have its transfer of the Property to Purchaser qualify as a deferred like-kind exchange within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended. Seller and Purchaser acknowledge and agree that Seller intends to effectuate a deferred like-kind exchange through the use of an intermediary in the manner described in Treas. Reg. § 1.031(k)-1(g)(8), example 4, or other applicable provision. Purchaser agrees to reasonably cooperate with Seller in effectuating such a deferred like-kind exchange through the use of such an intermediary including consenting to an assignment of Seller's rights under this Contract to an intermediary. Purchaser, however, shall have no obligation to locate, contract for or take title to any property that Seller may wish to acquire or to incur any indebtedness or other obligation as a part of Purchaser's agreement to cooperate.

10.15 Location of Flood Plain. Seller makes no representation or warranty, express or implied, regarding the location of any 100 year flood plain or the impact of a 100 year flood plain on the Property. Any costs or expenses associated with the revision of the 100 year flood

plain or revision of the 100 year flood plain map, including (a) administrative and filing expenses for obtaining a conditional letter of map revision or letter of map revision, and (b) costs of construction to revise the 100 year flood plain, shall be borne solely and exclusively by Purchaser, and Seller shall have no liability therefor.

10.16 As Is. PURCHASER ACKNOWLEDGES THAT EXCEPT FOR ANY EXPRESS WARRANTIES AND REPRESENTATIONS CONTAINED IN THIS CONTRACT AND SELLER'S SPECIAL WARRANTY OF TITLE CONTAINED IN THE DEED, PURCHASER IS NOT RELYING ON ANY WRITTEN, ORAL, IMPLIED OR OTHER REPRESENTATIONS, STATEMENTS OR WARRANTIES BY SELLER OR ANY AGENT OF SELLER OR ANY REAL ESTATE BROKER OR SALESMAN. ALL PREVIOUS WRITTEN, ORAL, IMPLIED OR OTHER STATEMENTS, REPRESENTATIONS, WARRANTIES OR AGREEMENTS, IF ANY, ARE MERGED IN THIS CONTRACT. EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER SHALL HAVE NO LIABILITY TO PURCHASER, AND PURCHASER HEREBY RELEASES SELLER FROM ANY LIABILITY (INCLUDING CONTRACTUAL AND/OR STATUTORY ACTIONS FOR CONTRIBUTION OR INDEMNITY), FOR, CONCERNING OR REGARDING (1) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING THE SUITABILITY THEREOF FOR ANY ACTIVITY OR USE; (2) ANY IMPROVEMENTS OR SUBSTANCES LOCATED THEREON; OR (3) THE COMPLIANCE OF THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENT OR OTHER BODY. THE FOREGOING INCLUDES A RELEASE OF SELLER FROM CLAIMS BASED ON SELLER'S NEGLIGENCE IN WHOLE OR IN PART AND CLAIMS BASED ON STRICT LIABILITY. SELLER HAS NOT MADE, DOES NOT MAKE AND EXPRESSLY DISCLAIMS, ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR GUARANTEES, EXPRESSED OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE MERCHANTABILITY, HABITABILITY, QUANTITY, QUALITY OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR ITS SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE. PURCHASER AFFIRMS THAT PRIOR TO CLOSING PURCHASER SHALL HAVE (i) INVESTIGATED AND INSPECTED THE PROPERTY TO ITS SATISFACTION AND BECOME FAMILIAR AND SATISFIED WITH THE CONDITION OF THE PROPERTY, AND (ii) MADE ITS OWN DETERMINATION AS TO (a) THE MERCHANTABILITY, QUANTITY, QUALITY AND CONDITION OF THE PROPERTY, INCLUDING THE POSSIBLE PRESENCE OF TOXIC OR HAZARDOUS SUBSTANCES, MATERIALS OR WASTES OR OTHER ACTUAL OR POTENTIAL ENVIRONMENTAL CONTAMINATES, AND (b) THE PROPERTY'S SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE. PURCHASER HEREBY ACCEPTS THE PROPERTY IN ITS PRESENT CONDITION ON AN "AS IS", "WHERE IS" AND "WITH ALL FAULTS", INCLUDING ENVIRONMENTAL, BASIS AND ACKNOWLEDGES THAT (i) WITHOUT THIS ACCEPTANCE, THIS SALE WOULD NOT BE MADE, AND (ii) THAT SELLER SHALL BE UNDER NO OBLIGATION WHATSOEVER TO UNDERTAKE ANY REPAIR, ALTERATION, REMEDIATION OR OTHER WORK OF ANY KIND WITH RESPECT TO ANY PORTION OF THE PROPERTY. IF THE CLOSING OCCURS, PURCHASER AND ITS SUCCESSORS AND ASSIGNS HAVE, AND SHALL BE DEEMED TO HAVE, ASSUMED ALL RISK AND LIABILITY WITH RESPECT TO THE PRESENCE OF TOXIC OR HAZARDOUS SUBSTANCES, MATERIALS OR WASTES OR OTHER ACTUAL OR POTENTIAL ENVIRONMENTAL CONTAMINATES ON, WITHIN OR UNDER THE SURFACE OF THE PROPERTY, WHETHER KNOWN OR UNKNOWN, APPARENT, NON-APPARENT OR LATENT, AND WHETHER EXISTING PRIOR TO, AT OR SUBSEQUENT TO TRANSFER OF THE PROPERTY TO PURCHASER. SELLER IS HEREBY RELEASED BY PURCHASER AND ITS SUCCESSORS AND ASSIGNS OF AND FROM ANY AND ALL RESPONSIBILITY, LIABILITY, OBLIGATIONS AND CLAIMS, KNOWN OR UNKNOWN, INCLUDING (1) ANY

OBLIGATION TO TAKE THE PROPERTY BACK OR REDUCE THE PRICE, OR (2) ACTIONS FOR CONTRIBUTION OR INDEMNITY, THAT PURCHASER OR ITS SUCCESSORS AND ASSIGNS MAY HAVE AGAINST SELLER OR THAT MAY ARISE IN THE FUTURE, BASED IN WHOLE OR IN PART UPON THE PRESENCE OF TOXIC OR HAZARDOUS SUBSTANCES, MATERIALS OR WASTES OR OTHER ACTUAL OR POTENTIAL ENVIRONMENTAL CONTAMINATES ON, WITHIN OR UNDER THE SURFACE OF THE PROPERTY, INCLUDING ALL RESPONSIBILITY, LIABILITY, OBLIGATIONS AND CLAIMS THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED 42 U.S.C. § 9601 ET SEQ. PURCHASER FURTHER ACKNOWLEDGES THAT THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY EXPLAINED TO PURCHASER AND THAT PURCHASER FULLY UNDERSTANDS AND ACCEPTS THE SAME. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE CLOSING AND SHALL BE INCLUDED IN THE DEED.

10.18 Avigation Easement. Purchaser acknowledges that the Property is subject to an avigation easement, which shall be a Permitted Exception substantially in the form of Exhibit "F" attached to the Deed and incorporated herein by reference.

10.19 Drainage Easement. Prior to Closing, the parties will agree on the location of a drainage easement across other property owned by Seller. Such easement shall be of mutual benefit to Seller and Purchaser and shall be a Permitted Exception

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SIGNATURE PAGE(S) FOLLOWS.*

IN WITNESS WHEREOF, the parties have executed this Purchase and Sale Agreement as of the ____ day of _____, 2006.

SELLER:

HILLWOOD ALLIANCE RESIDENTIAL, L.P.,
a Texas limited partnership

By: Hillwood Operating, L.P.,
a Texas limited partnership,
its general partner

By: Hillwood Development Company, LLC,
a Texas limited liability company,
its general partner

By: _____
Name: _____
Title: _____

PURCHASER:

KELLER INDEPENDENT SCHOOL DISTRICT

By : _____
Name: _____
Title: _____
Date: _____

The undersigned Title Company acknowledges receipt of the Earnest Money and agrees to hold and disburse the Earnest Money as provided in this Contract.

REPUBLIC TITLE OF TEXAS, INC.

By: _____
Name: _____
Title: _____
Date: _____

Attachments:

Exhibit A – Property Description

Exhibit B – Deed

EXHIBIT A
to
Purchase and Sale Agreement

PROPERTY DESCRIPTION

EXHIBIT B
to
Purchase and Sale Agreement

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY 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 §
 §
COUNTY OF TARRANT §

THAT, HILLWOOD ALLIANCE RESIDENTIAL, L.P., a Texas limited partnership ("Grantor"), for and in consideration of the sum of \$10.00 cash in hand paid by KELLER INDEPENDENT SCHOOL DISTRICT ("Grantee"), whose address is 350 Keller Parkway, Keller, Texas 76248, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, has GRANTED, BARGAINED, SOLD and CONVEYED and by these presents does GRANT, BARGAIN, SELL and CONVEY unto Grantee, that certain tract of real property situated in Tarrant County, Texas, and described in Exhibit "A" attached hereto and made a part hereof for all purposes, together with all and singular the rights, privileges, hereditaments, and appurtenances pertaining to such real property, including any and all improvements and fixtures currently attached to and located thereon (the "Property").

This conveyance is being made by Grantor and accepted by Grantee subject to all easements, restrictions, rights, reservations, encumbrances and other matters described in Exhibits "B", "C", "D" and "E" , respectively, attached hereto and incorporated herein by reference (collectively, the "Permitted Exceptions").

TO HAVE AND TO HOLD the Property, together with, all and singular, the rights and appurtenances thereto in anywise belonging, to Grantee and Grantee's successors and assigns forever; and subject to the Permitted Exceptions, Grantor does hereby bind Grantor and Grantor's successors and assigns to warrant and forever defend, all and singular, the Property unto the Grantee and 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, subject to the Permitted Exceptions.

*[REMAINDER OF PAGE INTENTIONALLY BLANK.
SIGNATURE PAGE(S) FOLLOWS.]*

EXECUTED to be effective the _____ day of _____, 2006.

GRANTOR:

HILLWOOD ALLIANCE RESIDENTIAL, L.P.,
a Texas limited partnership

By: Hillwood Operating, L.P.,
a Texas limited partnership,
its general partner

By: Hillwood Development Company, LLC,
a Texas limited liability company,
its general partner

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2006, by _____, _____ of Hillwood Development Company, LLC, a Texas limited liability company, on behalf of said limited liability company, in its capacity as general partner of Hillwood Operating, L.P., a Texas limited partnership, on behalf of said limited partnership, in its capacity as general partner of Hillwood Alliance Residential, L.P., a Texas limited partnership, on behalf of said limited partnership.

Notary Public, State of Texas

EXHIBIT "A"
to
Special Warranty Deed

Legal Description

EXHIBIT "B"
to
Special Warranty Deed
Permitted Exceptions

1. The lien for _____ ad valorem taxes not yet due and payable.
2. [Permitted Exceptions as established under this Contract]

EXHIBIT "C"
to
Special Warranty Deed

Covenants, Conditions and Restrictions

Grantor owns other tracts around the Property and desires that the Property be developed in a manner that will enhance and not detract from the desirability of such other tracts. Therefore, Grantor adopts, establishes and imposes the following covenants, conditions and restrictions upon the Property and declares that the Property and all portions thereof shall be held, conveyed, occupied and developed subject to all of the provisions of this Declaration. Owner accepts title to the Property subject to and agrees to comply with all of the following provisions.

ARTICLE I

GENERAL

SECTION 1.01. PURPOSE. The purpose of this Declaration is to promote the orderly development and use of the Property; to maintain and support a quality-designed community; to prevent the erection on the Property of any Improvements built of improper design or materials; to prevent any haphazard and inharmonious improvement of sites on the Property; to restrict certain uses of the Property; to encourage the erection of attractive Improvements; to provide for setbacks from Streets and other property lines; and to require the orderly and effective maintenance of the Property.

SECTION 1.02. DEFINITIONS. The following words or phrases when used in this Declaration, unless the context otherwise indicates or requires, shall have the following meanings:

- a. "Building Setback" shall have the meaning set forth in Section 2.19 of this Declaration.
- b. "City" shall mean the City of Keller, Texas.
- c. "Declaration" shall mean this Declaration of Development Covenants and all amendments thereto filed for record in the office of the County Clerk of Tarrant County, Texas.
- d. "Grantor" shall mean Hillwood Alliance Residential, L.P., and such successors or assigns to whom rights and powers reserved herein to Grantor expressly are conveyed or assigned in writing.
- e. "Improvements" shall mean any and all building improvements constructed on the Property, from initial construction through later construction which are intended to be temporary or permanent in nature (other than changes made during a period of construction which will be removed when the construction period is complete), including, but not limited to, new buildings and structures and changes to all building exteriors and roof structures, utility and parking structures. "Improvements" include both original Improvements and all later changes and improvements.

f. "Owner" shall mean each Person who is a record owner of a fee simple interest in any parcel of land within the Property, but excluding any Person who holds only a lien or interest in any parcel of land within the Property as security for the performance of any obligation.

g. "Person" shall mean any natural person, corporation, partnership, trust or other legal entity.

h. "Property" shall mean the real property described in Exhibit "A" to the Special Warranty Deed to which this Declaration is attached.

i. "Street" shall mean any land located within an easement or a right-of-way in or adjacent to the Property now or at any time hereafter dedicated to any governmental entity for public use as a roadway for motor vehicles.

j. "Unpaved Right-of-Way" shall mean the portion of a Street between the edge of the street pavement and the right-of-way line of the Street.

Other terms used in this Declaration are defined in various provisions used herein.

ARTICLE II

PROTECTIVE COVENANTS

SECTION 2.01. GENERAL. Each Owner, occupant or other user of any portion of the Property at all times shall comply in every respect with this Declaration. All portions of the Property shall be developed in accordance with this Declaration as such may be amended as herein provided. The provisions of this Article III set forth certain requirements which, in addition to the other provisions of this Declaration, shall apply with respect to the development and use of the Property. **IN SOME INSTANCES GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH PUBLIC REQUIREMENT AND ANY REQUIREMENT OF THIS DECLARATION, THE MORE RESTRICTIVE REQUIREMENT SHALL PREVAIL AS LONG AS THE MORE RESTRICTIVE REQUIREMENT DOES NOT VIOLATE PUBLIC REQUIREMENTS. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS DECLARATION BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL.**

SECTION 2.02. [Intentionally deleted.]

SECTION 2.03. PROHIBITED USES. Without limiting the generality of Section 2.02 above, the following uses are prohibited on the Property:

- a. residential uses, including, but not limited to, mobile homes and trailer courts;
- b. junk yard, salvage yard or abandoned vehicle operation;
- c. dumping, disposal, incineration or reduction of garbage or refuse of any nature, other than garbage or refuse produced on a Site;

- d. smelting of iron, tin, zinc or other ore;
- e. landfill;
- f. pawn shop;
- g. used automobile dealership primarily engaged in the business of selling automobiles;
- h. massage parlor;
- i. sexually-oriented business such as, but not limited to, x-rated movie or video sales, theater or rental facility, nude modeling studio, lounge or club featuring nude or semi-nude entertainers or escort service;
- j. slaughterhouse or plant for the rendering of animal substances;
- k. drive-in movie theater;
- l. overnight parking or storage of campers, mobile homes, boats or motor homes except in covered or enclosed areas, other than when such parking or storage is an integral part of the regular business conducted at a Site;
- m. any use which involves the raising, breeding or keeping of any animals or poultry or that involves any agricultural activities; and
- n. any use that is not a Permitted Use.

SECTION 2.04. FIRE PROTECTION. All buildings shall be designed, constructed and maintained so as to comply fully at all times with any applicable public codes, ordinances, rules, regulations and orders relating to fire protection.

SECTION 2.05. PARKING. All surface parking shall be paved with asphalt or concrete and shall have concrete curbs.

SECTION 2.06. TRASH AND GARBAGE. The Property shall not be used or maintained as a dumping ground for rubbish, trash or garbage before, during or after the installation of any Improvements. Notwithstanding the foregoing, normal construction debris shall be temporarily allowed during construction of Improvements on the Property. Trash collection containers shall be situated and enclosed or otherwise screened as required by Grantor as not to be visible from public streets or other adjacent sites. If within 30 days after the issuance of written notice by Grantor to an Owner, said Owner shall have failed either to remove any trash, rubble or construction debris, or to exercise reasonable care or conduct to prevent or remedy a dangerous, unclean or unsightly condition, then Grantor shall have the authority, right and easement to go on the Property for the purpose of cleaning the Property said Site and/or otherwise correcting said condition, or conditions and shall have the authority and right to collect the out of pocket cost thereof from the Owner.

SECTION 2.07. FUEL FACILITIES. Fuel storage and dispensing facilities may be installed on the Property only after prior written authorization of Grantor has been obtained. The Owner shall be fully responsible for insuring that such facilities and their installation comply fully with all applicable laws and regulations, and the provisions of Section 3.16 above shall be applicable to such facilities.

SECTION 2.08. [Reserved].

SECTION 2.09. [Intentionally deleted.]

SECTION 2.10. [Intentionally deleted.]

SECTION 2.11. [Intentionally deleted.]

SECTION 2.12. UNDERGROUND UTILITIES. Any and all pipes, lines and wires used for the transmission of water, natural gas, electricity, telephone, television, sound or any other utilities, which are not within a building, shall be constructed and maintained underground within the Property unless required to be above ground for technical reasons and approved by Grantor. However, temporary above-grade utilities may be approved by Grantor for use during construction and until permanent underground service is available to the Property upon written advance approval by Grantor. No well shall be constructed on the Property.

SECTION 2.13. SCREENING. All towers, tower antennae, satellite receiving and transmitting equipment, other equipment and loading, maneuvering and service areas on the Property, and such other items and areas as designated by Grantor, shall be screened to the extent reasonably practical from ground level view. Grantor shall have full power to determine what facilities or areas must be screened and the screening materials and requirements for each.

SECTION 2.14. [Reserved]

SECTION 2.15. SURFACE WATER FLOW AND DRAINAGE. Natural streams and water courses on the Property shall be protected and shall not have either natural flow reduced or restricted, other than temporarily during construction periods, unless the express prior written approval of Grantor has been given. Any such natural streams and water courses may be altered, rechanneled or modified in accordance with Plans that have been approved by the Grantor. Plans for all ponds and other "water features" of any kind must be submitted in advance for Grantor approval. The Owner shall control water runoff to prevent damage to adjacent tracts or Streets.

SECTION 2.16. PROHIBITED ACTIVITIES. No dangerous, noxious, offensive or nuisance activities, as determined by Grantor, or any activities which violate any applicable laws shall be conducted or permitted to occur by any Owner or its agents, employees, contractors, occupants or invitees on any portion of the Property. No operation or use of any portion of the Property shall be permitted or maintained by any Owner or its agents, employees, contractors, occupants or invitees that, in the opinion of Grantor, causes or produces noise or sound that is objectionable because of its volume, duration, frequency or shrillness, smoke, noxious, toxic or corrosive fumes or gases, obnoxious odors, dust or dirt or unusual fire or explosion hazards. The above prohibitions are in addition to those set forth in Sections 3.01 and 3.03 above.

SECTION 2.17. [Reserved]

SECTION 2.18. CONSTRUCTION STANDARDS.

a. Any builder engaged to construct Improvements on any portion of the Property may conduct its construction operations and activities and do all things reasonably necessary as required to expeditiously commence, continue and diligently complete construction of any such Improvements, including the provision of temporary buildings or trailers for administration of work and for the storage of materials and equipment, and the construction of temporary security fences and lighting, except that all construction activities, temporary structure, storage of materials and equipment, all construction-related parking and temporary security fences shall be confined entirely on the Property. Each Owner is responsible for, and shall cause, through appropriate contractual provisions, all costs of cleaning up any debris or waste improperly disposed of anywhere on the Property. Once commenced, all construction shall be continued with commercially reasonable due diligence until completion.

b. Prior to any excavation on the Property, the Owner will determine and mark the location of and will protect all existing utilities. Utility lines are to be located before earth moving or drilling equipment operations are allowed to start near underground utilities. All backfill will be adequately compacted to prevent future settlement, especially under pavement and other structures.

SECTION 2.19. IMPROVEMENT SETBACKS. All improvements erected on the Property will be in full compliance with all applicable setback ordinances enacted by the City.

SECTION 2.20. ENVIRONMENT.

a. No Owner shall dispose of or otherwise release or allow any of its agents, employees, contractors, occupants or invitees to release any hazardous or toxic substances, petroleum products, chemicals, industrial sewage or wastes of any kind on, in or under any part of the Property or any adjacent tracts, including, but not limited to, any surface waters or ground water located on the Property or any adjacent tracts, or into public sanitary sewer systems serving the Property without pre-treatment as required by applicable governmental authorities.

b. Excluding the Keller Independent School District to the extent prohibited by applicable law, each Owner and each occupant of the Property shall indemnify and hold harmless Grantor and its respective officers, directors, employees, partner and agents from any and all liabilities, obligations, losses, damages, penalties, fines, claims, suits, costs and damages required to be paid by Grantor, any other owner or occupant of any property, and their officers, directors, partners, employees, representatives or agents arising in any way from (i) the disposal or release, after the date of such Owner's acquisition of the Property, of any toxic or hazardous substances, petroleum products, chemicals, industrial sewage or wastes of any kind in, on or under the Property or any other property, including, but not limited to, any surface or groundwater, and (ii) any pollution, escape, seepage, trespass, exposure, migration of any toxic or hazardous substances, petroleum products, chemicals, industrial sewage or waste of any kind from the Property in the subsurface, surface or in the air commencing after the date of such Owner's acquisition of the Property. The claims and causes of action described in (i) and (ii) above shall be deemed to include, but are not limited to, claims, demands and/or causes of action for strict liability in tort or for strict liability or other liability under any present or future state or federal law or regulation, including, but not limited to, the Solid

Waste Disposal Act, TEX. REV. CIV. STAT. ANN. 4477-7, Chapter 26 (Water Quality Control) of the TEX. WATER CODE ANN., the Resource Conservation and Recovery Act of 1976, 42U.S. §6901, et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., and such amendments as may be made to these statutes. The liabilities, obligations, losses, damages, penalties, fines, claims, suits, costs and damages required to be paid by Grantor or any other owner or occupant of any other property or their officers, directors, partners, employees, representatives, or agents covered by this indemnity include closure costs, cleanup costs, containment costs, damages to person, damages to property, damage to resources or the environment, diminution in the value of affected parcels, all legal expenses, all other reasonable expenses incurred by Grantor or any other owner or occupant of any other property for the defense of any claim or cause of action covered by this indemnity, all engineering and expert fees and expenses for necessary surveys, testing and monitoring.

ARTICLE III

MAINTENANCE BY OWNER

The Owner shall have the duty and responsibility, at its sole cost and expense, to keep the Property and buildings and Improvements thereon in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following: prompt removal of all litter, trash, refuse and wastes; repairing exterior damage to Improvements; striping of parking areas and repainting of Improvements. Grantor shall have the right and on easement on the Property to perform any maintenance, upon the failure of the Owner to do so with such failure continuing for ten days after written notice thereof is given by Grantor to such Owner.

ARTICLE IV

GENERAL PROVISIONS

SECTION 4.01. BINDING EFFECT AND DURATION. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property, shall be binding on all Owners and shall inure to the benefit of and be enforceable by Grantor and its successors and assigns, and shall be and remain in effect for a period of 50 years from and after the date of the recording of this Declaration. Grantor may elect, in Grantor's sole discretion, to waive or release any available right, power or remedy available to Grantor with respect to this Declaration without waiving or releasing any other right, power or remedy available to Grantor with respect to this Declaration or otherwise affecting any covenants, conditions or restrictions upon the Property under this Declaration.

SECTION 4.02. OCCUPANTS. The covenants, conditions and restrictions of this Declaration shall be binding upon and enforceable against not only the Owner but also all occupants of the Property. Both the Owner of the Property and all occupants of the Property shall comply with all provisions and are both, jointly and severally, liable for breaches of or defaults under the provisions of this Declaration.

SECTION 4.03. INTERPRETATION. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction

which, in the opinion of Grantor, will best effect the intent of Grantor's general plan of development as reflected in this Declaration. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. Grantor shall have the right, power and authority to determine all questions arising under or in connection with this Declaration and to construe and interpret its provisions, and any determination, construction or interpretation made by Grantor, in the absence of an adjudication by a court of competent jurisdiction that such action was an abuse of discretion, shall be binding on the Owners. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of the filing for record of the Deed to which the Declaration is attached in the Real Property Records of Tarrant County, Texas. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer. The singular wherever used herein shall be construed to mean the plural when applicable and vice versa, and the use herein of any gender shall mean any other gender when applicable. The exhibits referred to herein and attached hereto are made a part hereof by reference. This Declaration shall be construed under and in accordance with the laws of the State of Texas.

SECTION 4.04. AMENDMENTS. This Declaration, or any provisions hereof, may be amended only by written document signed by the then Owners of the Property and by Grantor, or its successors or assign, and filed in the Real Property Records of Tarrant County, Texas, without the necessity of the joinder of any other Person.

SECTION 4.05. ENFORCEMENT. Grantor shall have the right, but not the obligation, to enforce the covenants, conditions and restrictions set out in this Declaration. Enforcement may be made by any proceedings at law or in equity against any Person violating or attempting to violate any part of this Declaration, as such may be amended, either to restrain or enjoin violations or to recover damages. Damages shall not be deemed adequate compensation for any breach or violation of any provision of this Declaration, and Grantor shall be entitled to relief by way of injunction, as well as any other remedy either at law or in equity. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs from the non-prevailing party. The rights, powers and remedies provided in this Declaration shall be cumulative and not restrictive of other remedies at law or in equity, and the exercise by a Person of any particular right, power or remedy shall not be deemed an election of remedies or to preclude such Person's resort to other rights, powers or remedies available to it.

SECTION 4.06. NO WAIVER OR OBLIGATION TO ENFORCE. No delay or failure on the part of Grantor to invoke any available right, power or remedy in respect to a breach of this Declaration shall be held to be a waiver by that party (or estop that party from asserting) any right, power or remedy available to it upon the recurrence or continuance of said breach or the occurrence of a different breach. Neither Grantor, or its officers or directors, shall be under any obligation to take any action to enforce the terms of this Declaration.

SECTION 4.07. VALIDITY AND SEVERABILITY. Violation of or failure to comply with this Declaration shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may then be existing on any Site. Invalidation of any one or more of the provisions of this Declaration, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of this Declaration conflicts with mandatory provisions of

any ordinance or regulation promulgated by any appropriate governmental authority, then such governmental requirement shall control.

SECTION 4.08. NOTICES. Any notice required to be given to Grantor or the Owner under the provisions of this Declaration shall be deemed to have been properly delivered when actually delivered by hand-delivery or when deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed, (a) for notice to the Owner to the address of the Owner as shown on the records of Grantor at the time of such mailing, and (b) for notice to Declarant to Three Lincoln Centre, 5430 LBJ Freeway, Suite 800, Dallas, Texas 75240, or at such other address specified by Declarant by a document recorded for such purpose in the Real Property Records of Tarrant County, Texas.

SECTION 4.09. MORTGAGEES. The holder of a mortgage shall be furnished with written notification from Grantor of any default by the respective mortgagor/Owner in the performance of such mortgagor's/Owner's obligations as established by this Declaration, provided that Grantor has theretofore been furnished, in writing, with the correct name and address of such mortgage holder and a request to receive such notification, and cure by said mortgage holder within the times herein provided for performance by Owner of such default shall be accepted. No default by an Owner under any provision of this Declaration shall affect any existing lien or mortgage on that Owner's Site.

SECTION 4.10. APPROVALS. No approval by Grantor pursuant to the provisions hereof shall be effective unless in writing, except otherwise expressly provided herein.

EXHIBIT "D"

to

Special Warranty Deed

DISCLAIMER

Grantee acknowledges it is not relying on any written, oral, implied or other representations, statements or warranties by Grantor or any agent of Grantor or any real estate broker or salesman. All previous written, oral, implied or other statements, representations, warranties or agreements, if any, are merged herein. Grantor shall have no liability to Grantee for, concerning or regarding (1) the nature and condition of the Property, including the suitability thereof for any activity or use; (2) any improvements or substances located thereon; (3) the compliance of the Property with any laws, rules, ordinances or regulations of any government or other body; or (4) the availability of utilities to the Property. **GRANTOR HAS NOT MADE, DOES NOT MAKE AND EXPRESSLY DISCLAIMS, ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR GUARANTEES, EXPRESSED OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE MERCHANTABILITY, HABITABILITY, QUANTITY, QUALITY OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR ITS SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE. GRANTEE ACCEPTS THE PROPERTY IN ITS PRESENT CONDITION, INCLUDING ENVIRONMENTAL, BASIS, AND ACKNOWLEDGES AND AGREES THAT (i) WITHOUT THIS ACCEPTANCE, THE TRANSFER TO GRANTEE WOULD NOT BE MADE, (ii) GRANTOR SHALL BE AND IS UNDER NO OBLIGATION WHATSOEVER TO UNDERTAKE ANY REPAIR, ALTERATION, REMEDIATION OR OTHER WORK OF ANY KIND WITH RESPECT TO ANY PORTION OF THE PROPERTY, (iii) THAT THE CONSIDERATION PAID BY GRANTEE REFLECTS THE EXISTING CONDITIONS OF THE PROPERTY, INCLUDING THE PRESENCE OF ANY ENVIRONMENTAL CONTAMINATION THEREON, AND (iv) GRANTEE'S USE OR INTENDED USE OF THE PROPERTY MAY BE IMPAIRED BY ITS ENVIRONMENTAL CONDITION. GRANTEE AND ITS SUCCESSORS AND ASSIGNS HAVE, AND SHALL BE DEEMED TO HAVE, ASSUMED ALL RISK AND LIABILITY WITH RESPECT TO THE PRESENCE OF HAZARDOUS MATERIAL ON OR WITHIN OR UNDER THE SURFACE OF THE PROPERTY, WHETHER KNOWN OR UNKNOWN, APPARENT, NON-APPARENT OR LATENT, AND WHETHER EXISTING PRIOR TO, AT OR SUBSEQUENT TO, TRANSFER OF THE PROPERTY. AS USED HEREIN, "HAZARDOUS MATERIALS" SHALL MEAN AND REFER TO ANY SUBSTANCE REGULATED BY LOCAL, STATE OR FEDERAL LAWS, REGULATIONS OR STATUTES.**

EXHIBIT "E"
to
Special Warranty Deed

Avigation Easement Reservation

Grantor reserves for the benefit of the City of Fort Worth, Texas, Alliance Airport Authority, Inc., Alliance Air Management, Ltd. (d/b/a Alliance Air Services), Alliance Aviation Management, Ltd. (d/b/a Alliance Aviation Services), Alliance Aviation Investors, L.P., Alliance Air Services, Inc., Alliance Aviation Services, Inc., persons or entities conducting aircraft and aviation related operations to, at, from or in the vicinity of Fort Worth Alliance Airport ("Alliance Airport"), persons or entities owning, leasing or occupying facilities at or in the vicinity of Alliance Airport and persons or entities operating any business at or in the vicinity of Alliance Airport (collectively, the "Benefited Parties") an easement on the Property for:

- (a) the free and unobstructed use and passage of all types of aircraft over the Property; and
- (b) noise, vibration, fumes, dust, other particulate matter, fuel or lubricant resulting from aircraft landing, taking off or operating at, to or from Alliance Airport.

Grantee, by accepting this Deed, for itself and all future owners of all or any portion of the Property, acknowledges that the Property is in the vicinity of Alliance Airport and accepts and releases the Benefited Parties from all claims, causes of action and liabilities of any nature arising out of or in connection with the use of the easement or related to the proximity of the Property to Alliance Airport and the annoyances and effects resulting therefrom, including, without limitation, noise, vibration, fumes, dust, fuel, lubricants, other particulate matter and interference with sleep and communication.