



August 19, 2004

OFFER TO PURCHASE

The undersigned, The City of Mason, municipal corporation (hereinafter called "Buyer"), whose address is 6000 Mason-Montgomery Road, Mason, OH 45040 (Phone 513.229.8510) hereby offers to purchase from Speedway SuperAmerica LLC, a Delaware limited liability company (hereinafter called "Seller"), whose address is c/o Real Estate Department, Room 1604, 539 South Main Street, Findlay, Ohio 45840 (Phone 614.274.0981) at the price and upon the terms and conditions set forth below, that parcel of land with the building and improvements thereon, known for numbering purposes as Unit #SSA 3396, situated in the City of Mason, County of Warren, and State of Ohio, the premises being more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN

1. PURCHASE PRICE AND METHOD OF PAYMENT:

(A) Purchase price for said premises shall be the sum of Three Hundred Twenty-Five Thousand Dollars (\$325,000.00).

(B) Buyer herewith deposits with Seller the sum of Five Thousand Dollars (\$5,000.00) as earnest money to be held by Seller pending closing.

Seller is expressly authorized to deposit Buyer's earnest money check and to hold the funds in its account until such time as Seller's Management takes final action either approving or rejecting this Offer to Purchase (hereinafter called "Offer").

(C) Balance due of Three Hundred Twenty-Thousand Dollars (\$320,000.00) (or such greater or lesser amount as may be required to complete payment of purchase price after credits, adjustments or prorations) shall be paid by Certified Check or Bank Cashier's Check or wire transfer of immediately available funds, as directed by Seller, upon closing and delivery of the deed.

2. ACCEPTANCE OF OFFER: This Offer shall be open for written acceptance by Seller through the Thirtieth (30th) day from the date of Buyer's execution hereof. If the Offer is not accepted, the sum delivered with this Offer and specified in Paragraph 1(B) shall be returned to Buyer. Any acceptance that is postmarked on or before said Thirtieth (30th) day shall be deemed a valid acceptance by Seller.

3. CLOSING OF TRANSACTION: If this Offer is accepted by Seller, the contract shall be completed no later than 75-days after from the date of such acceptance, subject, however, to the provisions of Paragraphs 8 and 9 hereinbelow and special conditions contained in Paragraph 19, if any.

4. ESCROW: (a) It is contemplated that this transaction, at the option of either party, may be concluded through an escrow agent, and, in such event, all funds and documents pertaining to this transaction shall be placed in escrow on or before the closing date, with each party sharing the escrow fee equally.

(b) Buyer and Seller acknowledge and agree that either of them may engage in a deferred exchange of like-kind property utilizing a qualified intermediary pursuant to Section 1031 of the Code. Notwithstanding any provision herein to the contrary, in the event either party elects to engage in a deferred like-kind exchange, the other party agrees to consent to the assignment of such party's rights under this Offer to a qualified intermediary in order to facilitate the deferred like-kind exchange. The parties agree to execute any and all documents necessary to consummate the purposes of this section. Any actions taken by Buyer and Seller in conformance with this section shall be at the cost of the party electing such exchange, and such documents shall not relieve the electing party of any of its obligations or liabilities under this Offer.

5. DEED: Said premises shall be conveyed to Buyer by a good and sufficient general warranty deed, or its equivalent for the state involved, representing said premises to be free and clear of all encumbrances except the following:

(a) Taxes and assessments (both general and special), not then due and payable;

(b) Zoning ordinances, subdivision and planning laws and regulations and building code restrictions and all laws, rules and regulations relating to land and structures and their use, including but not limited to governmental regulations relating to buildings, building construction, building line and use and occupancy restrictions, and violations of any of the foregoing;

(c) Easements, conditions, reservations, agreements and restrictions of record, as approved by the Buyer, if any, and the restriction specified in paragraph 6 below;

(d) Such a state of facts as an accurate survey might show as approved by Buyer, and

(e) All legal roads and highways.

6. DEED RESTRICTION: Said premises shall be conveyed subject to the following restriction to be contained in the deed:

"By acceptance hereof, Grantee agrees that for a period of twenty-five (25) years from and after the date of this conveyance, the premises shall not be used for a convenience store or for the sale, marketing, storage or advertising of petroleum fuels or motor oils, and that this restriction shall be a covenant running with the land and shall be contained in and made a part of every deed, mortgage, lease or other instrument affecting the title to said premises."

7. REAL ESTATE TAXES: All general and special real estate taxes and assessments shall be prorated as of the date of closing pursuant to local custom based on the last available County Treasurer's tax duplicate and such adjustments shall be final. Seller shall pay the cost of the real estate transfer tax, if any. Buyer shall pay the cost of recording the deed.

8. EVIDENCE OF TITLE: Seller's only obligation to provide evidence of title shall be to make available to Buyer whatever evidence of title (abstract of title, title insurance policy, etc.), if any, Seller may have in its possession. It shall be Buyer's responsibility at its sole cost to obtain title insurance or a title opinion, if so desired by Buyer. If the title to the premises cannot be conveyed as provided in Paragraph 5 herein, then there shall be refunded to Buyer any part of the purchase price paid or deposited by Buyer hereunder and Buyer shall promptly return the evidence of title sent to Buyer by Seller and this Offer shall terminate and both parties shall be released from any obligations hereunder. Buyer shall have thirty (30) days after receipt of Seller's evidence of title within which to notify Seller in writing of any title defects by virtue of which title cannot be conveyed as provided in Paragraph 5 herein. "Title Defects" shall include those encumbrances, including but not limited to easement and restrictive covenants, which are unacceptable to Buyer in Buyer's sole and absolute discretion.

Upon receipt of such written notification, Seller shall have sixty (60) days within which to correct the same; provided, however, that Seller shall be under no obligation to correct the same. If Seller is unwilling or unable to correct the same within sixty (60) days after receipt of notification, this Offer shall terminate upon Seller's written notice in which event Seller shall promptly refund the deposit with no further liability on the part of either party. Buyer shall have the right to waive such defects and accept such title as Seller is able to convey without reduction or abatement of the purchase price, provided that Buyer must make such election within ten (10) days of receipt of notice that Seller either cannot or will not cure such defects.

9. CONDITION OF PREMISES: See Exhibits "B" and "C" attached hereto and incorporated herein.

10. ASSIGNMENT BY CONSENT OF SELLER: This Offer shall be binding upon and inure to the benefit of the respective heirs, representatives, executors, administrators and successors and assigns of the parties hereto. It shall not, however, be assigned by the Buyer without the prior written consent of the Seller.

11. SURVIVAL AFTER CLOSING: This Offer shall survive all documents of closing and is enforceable despite the exchange of deed and other documents of title as called for herein.

12. DEFAULT BY BUYER: If Buyer fails to perform any of the covenants of this Offer, all money paid pursuant to this Offer by the Buyer as aforesaid shall be retained by or for the account of the Seller as consideration for the execution of this Offer and as agreed and liquidated damages in full settlement of any claims for damages.

13. DEFAULT BY SELLER: If Seller shall default in its obligations hereunder and shall refuse to perform this Offer, at the Buyer's option, the aforesaid money paid by the Buyer shall be returned to the Buyer on demand in full settlement of any claims for damages or the Buyer shall have the right of specific performance.

14. NOTICES: All notices and demands herein required or permitted shall be in writing and shall not be deemed sufficient unless given by mailing the same by registered, certified or express United States mail, or express delivery service, postage prepaid, return receipt requested, addressed to the party to receive same at the address of such party shown above or such other address as such party may hereafter furnish to the other party in writing. The date of posting, provided it is by means of one of the methods set forth above, shall be deemed the effective date of service.

15. POSSESSION: Possession of the premises shall be delivered to the Buyer on the date of closing.

16. COMMISSION OBLIGATIONS: Except for the broker named in the attached Commission Agreement, if any, each party represents to the other that neither has contacted a broker, finder or other agent who is seeking or soliciting a commission or other similar charge with reference to this transaction.

17. NO REPRESENTATIONS OR WARRANTIES OUTSIDE THIS OFFER: Seller is not liable or bound by any warranties, guarantees, statements or representations made by any broker, agent, employee or other person representing or purporting to represent Seller unless herein expressly set forth. It is understood and agreed that any understandings and agreements heretofore had between the parties hereto are merged in this Offer which alone fully and completely expresses their agreement and that the same is entered into after full investigation, neither party relying on any statement or representation not embodied in this Offer made by the other. This Offer may not be changed or terminated orally. The Buyer acknowledges that, unless and until this Offer is accepted in writing by Seller, Seller shall have no obligation or liability whatsoever with respect to this Offer or with respect to selling the subject premises to the Buyer. The Buyer further understands and acknowledges that unless and until this Offer is accepted in writing by Seller, Seller may receive, solicit, consider and accept or not accept other offers from any other person or persons to purchase the premises without incurring any obligation or liability whatsoever to the Buyer.

18. TIME OF ESSENCE: Time is of the essence of this Offer.

19. ADDITIONAL CONDITIONS: (If any)

(a) Buyer shall have a period of 30 days after Seller's execution of the contract to conduct any and all due diligence to determine if it wants to proceed with purchasing the Premises. At the conclusion of the 30-day period, Buyer shall provide written notice to Seller if it wishes to conclude the purchase. Seller shall then have 45 days to close its business on the Premises and remove the underground tanks, etc., in accordance with Paragraph 2(a) of Exhibit B. The transaction between the parties shall then be closed and Seller shall complete any required remediation per Exhibit B.

20. COMPLIANCE WITH APPLICABLE LAWS: Buyer represents and warrants that Buyer and its subsidiaries and assigns and, to the best of Buyer's knowledge, the directors, officers, agents, employees and affiliates of Buyer and its subsidiaries and assigns, are and shall remain in compliance with any and all United States federal, state and local laws, rules and regulations including, but not limited to, the USA PATRIOT Act, Homeland Security Act and Executive Order No. 13224 dated 9/24/01 and the sanctions, regulations and executive orders administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"). Additionally, Buyer agrees that it shall comply with any reasonable requests made by Seller to certify continued compliance in the future with any such laws, rules and regulations. Should Seller at any time determine that Buyer or its subsidiaries and assigns, or any directors, officers, agents, employee or affiliates of Buyer or its subsidiaries and assigns are identified on the OFAC Specially Designated Nationals and Blocked Persons List ("SDN List"), Appendix A to 31 C.F.R. Chapter V or on any other such list maintained by the U.S. Government from time to time; or that Buyer or its subsidiaries and assigns, or any directors, officers, agents, employee or affiliates of Buyer or its subsidiaries and assigns, are owned or controlled by a party identified on the SDN List or any other such list; or that any funds to be provided by Buyer are derived directly or indirectly from any transaction in violation of U.S. law, rule or regulation, then Seller shall have the right to immediately terminate this Offer to Purchase without owing any further obligation or liability to Buyer. Finally, Seller shall have the right to take any and all steps necessary to comply with applicable federal, state and local laws, rules and regulations, including but not limited to turning over any money paid by Buyer to Seller under this Offer to a blocked account at a U.S. financial institution as required by the applicable government agency with jurisdiction.

21. CAPTIONS: The parties agree that the headings and captions contained herein are inserted for convenience and reference only and are not to be deemed part of or to be used in construing this Offer.

WITNESS:

Jean Bernard
Barbara E. Herzig

BUYER: The City of Mason

By: Scot F. Lahmer
Name: Scot F. Lahmer
Title: City Manager
Date: 9/13/04

And: _____
Name: _____
Title: _____
Date: _____

Speedway SuperAmerica LLC, as Seller hereby accepts the above Offer.

WITNESS:

+ Natalie Webster
+ Russell B. Lenson

By: + J. T. Morgan
Name: J. T. Morgan
Title: Sr. VP, Operations
Date: 9/29/04



COMMISSION AGREEMENT

In connection with the sale of property by Speedway SuperAmerica LLC (Seller) at _____ (address of property to be sold) to _____ (Buyer), as evidenced by an Offer to Purchase dated _____, _____ it is agreed that the real estate commission in this transaction will be paid by Seller to _____ (Broker/Realtor), whose address is _____ and whose Taxpayer Identification Number is _____ in the amount of _____ Dollars (\$_____) in full payment for services rendered in connection with this transaction. Such commission shall be due and payable only upon consummation of the sale by transfer of title and payment of the full purchase price and receipt of such purchase price by Seller.

No Broker/Realtor involved with this transaction.

(Broker/Realtor) _____

By: _____
Name: _____
Dated: _____

(Seller) Speedway SuperAmerica LLC

By: _____
Name: _____
Dated: _____

(Buyer) _____

By: _____
Name: _____
Dated: _____

EXHIBIT "A" (Legal Description)

to
Offer To Purchase
between

The City of Mason (Buyer)

and

Speedway SuperAmerica LLC (Seller)

91379

JH-3
 T&C: 5-OH-9501
 MOC Unit No: 1466
 EMC Unit No: 3396
 Location: 181 Reading Road & Main Street
 Mason, Ohio

LIMITED WARRANTY DEED

MARATHON OIL COMPANY, an Ohio corporation, successor by merger to Marathon Petroleum Company, formerly known as Marathon Oil Company and The Ohio Oil Company, whose address is 539 South Main Street, Findlay, Ohio 45840, Grantor, for the consideration of Ten Thousand and no/100 dollars (\$10,000) received to its full satisfaction of EMRO MARKETING COMPANY, a Delaware corporation, Grantee, whose TAX MAILING ADDRESS will be c/o Property Tax Records, 539 South Main Street, Findlay, Ohio 45840, grants, with limited warranty covenants, to said Grantee the following described real estate in the Village of Mason, County of Warren and State of Ohio, to-wit: 16-36-283-005

Being all of Lot Number Sixty-One (61), as the same is designated on the plat of said Village adopted in December 1890 and recorded in Plat Book No. 1, page 220, in the Office of the Recorder of Warren County, Ohio. (C)

EXCEPTING THEREFROM that portion conveyed to Joseph E. Muennich and Dolores C. Muennich by Warranty Deed dated June 30, 1964, more particularly described as follows:

Situated in the Village of Mason, County of Warren, and State of Ohio; being a part of Lot Number Sixty-One (#61) as the same is designated on the plat of said Village adopted in December, 1890, and recorded in Plat Book Number 1, Page 220, in the office of the Recorder of Warren County, Ohio, and further described as follows: Commencing at a point on the westerly line of Lot Number Sixty-One (#61), being South 39° 56' West a distance of 35.92 feet from the northwesterly corner of said Lot Sixty-One (#61); thence South 39° 56' West 6.0 feet to the southwesterly corner of Lot Sixty-one (#61); thence South 49° 56' East 88.43 feet to an iron pin; thence North 38° 51' East 6.0 feet to an iron pin; thence North 49° 56' West 88.43 feet to a point on the westerly line of Lot Number Sixty-One (#61) and the place of beginning.

PRIOR INSTRUMENT REFERENCE: Volume 237, Page 31.

This conveyance is made subject to taxes for the year 1993 and all subsequent years; all legal highways; zoning and building laws, ordinances and regulations, and violations of any of the foregoing; such a state of facts as an accurate survey might show; and to all restrictions, easements, rights-of-way, exceptions, reservations and conditions which are unrecorded or contained in prior instruments of record in the chain of title to the property conveyed hereby.

GRANTOR, insofar as it has the legal right to do so, does further release, remise and forever quitclaim unto GRANTEE, all of GRANTOR's rights, title and interest, if any, in and to all roadways, streets, alleys, easements and rights-of-way adjacent to or abutting on the property above described.

EXHIBIT "B" (Condition of Premises)

to
Offer to Purchase
between

The City of Mason ("Buyer")

and

Speedway SuperAmerica LLC ("Seller")

**MARKETING PROPERTY
(Tank/Line Removal and Rehabilitation Incomplete)**

1. **ACKNOWLEDGMENTS:** Buyer hereby acknowledges that the premises have been used in connection with the storage and sale of petroleum products, that underground storage tanks and other equipment and fixtures for such storage and sale are present on the premises, and that such storage tanks and other equipment and fixtures contain (or have contained) flammable, explosive or toxic materials or vapors. Seller and Buyer expressly recognize and agree that there was a release (or releases) of petroleum hydrocarbons into the soils and/or the groundwater at the premises prior to Buyer's possession, and documentation of the contamination attributable to such release(s) is included in Exhibit "C" to the Offer to Purchase, attached hereto and incorporated herein (such contamination is referred to herein as "Existing Contamination"). Seller has secured a No Further Action Letter for this post release, which was dated 6-19-00. As used herein, the term "Corrective Action" shall refer to one or more of the following activities: investigation, assessment, monitoring, sampling, analysis, cleanup, removal, disposal, on-site treatment, off-site treatment, active remediation, passive remediation, remediation alternatives including but not limited to risk-based corrective action ("RBCA"), if applicable, and/or other activities approved, concurred in or required by the governmental agency having jurisdiction (the "Agency"). Buyer agrees to all terms, conditions and covenants contained in the deed language in Section 8, below, as if such terms, conditions and covenants were fully set forth in this paragraph.

2. **ACTIONS REGARDING CONDITION OF PREMISES:**

a. Prior to closing on the sale of the premises, Seller shall remove all known underground storage tanks and related piping which are on the premises, along with the existing canopies. Seller shall backfill all areas excavated during such removal with fill material and/or gravel to match the grade of the adjacent undisturbed areas. Seller shall be responsible to compact any such backfill to a standard of 90% proctor. Copies of any removal/closure reports and any environmental testing performed by Seller during said removal shall be included in Exhibit "C". Notwithstanding anything herein to the contrary, if, in the reasonable respective judgment of either Seller or Buyer, substantial levels of environmental contamination are discovered at the premises during Seller's underground storage tank and related piping removal, then such party shall have the right (within ten (10) business days following receipt of documentation regarding such levels of contamination) to cancel this Offer to Purchase, in which case all earnest money paid by Buyer shall be disbursed to Buyer and neither party shall have any further obligations hereunder.

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SELLER'S INITIALS: 

BUYER'S INITIALS: 

b. Seller shall retain the obligation to satisfy the minimum requirements of the Agency concerning Corrective Action to address the Existing Contamination. Buyer acknowledges Seller's right to perform such Corrective Action and hereby grants Seller, and its consultants, contractors and agents an irrevocable license at no cost to Seller to enter upon the premises at any time from and after the date of closing to conduct Corrective Action and to place and remove all necessary equipment and improvements on the premises sufficient to satisfy the requirements of the Agency regarding the Existing Contamination. Seller shall use its best effort to provide notice to Buyer when it plans to enter the Premises to conduct Corrective Action. Seller, and/or its consultants, contractors and/or agents, shall maintain their respective ownership or control of all such equipment placed on the premises. Buyer will have the right to review any of Seller's Corrective Action that will disturb Buyer's improvements on the premises. The removal of any improvements is not anticipated and will be considered only as a final, necessary resort. Seller will use reasonable efforts to minimize any material disruptions to Buyer's business operations being conducted on the premises. Seller shall not have any legal liability to Buyer for any loss of business by Buyer caused by Seller's reasonable actions in performing Corrective Action. Buyer agrees that Buyer will not engage in any activity at the premises which would unreasonably interfere with Seller's performance of Corrective Action at the premises. In the event that Buyer interferes with Seller's performance of Corrective Action, Buyer agrees to pay Seller for the reasonable costs incurred by Seller as a result of any such interference, including, but not limited to, costs to replace monitoring wells that are damaged or destroyed by Buyer's activities. Buyer also agrees to reasonably cooperate with Seller in Seller's performance of any Corrective Action. Buyer further agrees that Buyer shall not have any claim against Seller for any damages to property or injuries to persons which may result from the performance of any Corrective Action pursuant to this agreement or from the presence of any contamination, including Existing Contamination, at the premises.

c. Seller shall use reasonable efforts to satisfy the minimum requirements of the Agency concerning the Existing Contamination. Seller reserves its legal appeal rights with respect to any orders, directives or requests from the Agency concerning, but not limited to, any Corrective Action at the premises. Buyer shall be responsible for any and all environmental contamination at the premises which occurs after the date of closing, including the migration of said environmental contamination that occurs after the date of closing and including but not limited to additional petroleum hydrocarbons or hazardous substances, hazardous wastes or solid wastes (all as defined in the Environmental Laws) (the "Future Contamination") and shall defend (with counsel reasonably acceptable to Seller), indemnify and hold Seller harmless from any and all liabilities, claims, losses, suits, actions, judgments, damages, costs (including reasonable attorneys' fees) or penalties incurred by or asserted against Seller, including but not limited to claims arising under the Environmental Laws, resulting from the occurrence, existence or presence of any Future Contamination. The term, "Environmental Laws", shall refer to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Clean Water Act, the state law equivalents of such acts, state and federal underground storage tank laws and regulations and all other environmental laws and regulations, all as amended.

d. Buyer shall at all times be in substantial compliance with all applicable Environmental Laws (including, without limitation, those applicable to the payment of fees and the satisfaction of all financial responsibility requirements, if applicable) necessary to be complied with to qualify the premises for participation in any and all applicable environmental

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SELLER'S INITIALS:



BUYER'S INITIALS:



reimbursement or funding programs relative to any and all Corrective Action which Seller shall perform pursuant to this Exhibit "B" and Buyer otherwise shall take no action nor fail to act in any way such as would cause Seller to be ineligible or unable to obtain reimbursement or funding for the Corrective Action which Seller shall perform from any and all applicable environmental reimbursement or funding programs. Buyer shall cause all subsequent operators or owners of the premises to agree to the same obligations set forth in this Subsection 2.d. for the benefit of Seller.

e. After completing the Corrective Action to address Existing Contamination, Seller agrees to restore the areas of the premises (including any improvements) that were disturbed by Seller's Corrective Action to substantially the same condition as existed on the date that such areas were so disturbed.

f. Seller shall perform its Corrective Action and shall otherwise enter upon the premises at its sole risk, cost and expense. Seller hereby waives and relinquishes any and all claims, liabilities, causes of action, demands, costs and expenses resulting from Seller's performance of Corrective Action now or hereafter arising in Seller's favor with respect to injury to persons or property, solely to the extent that such claims, liabilities, causes of action, demands, costs and expenses arise from Seller's conduct under this agreement.

g. Seller further agrees that, if requested by Buyer in writing, Seller shall provide to Buyer, at no cost or expense to Buyer, copies of the reports, data, inspections, tests and analyses of the premises that Seller sends to or receives from the Agency regarding the Existing Contamination and/or Seller's performance of Corrective Action at the premises.

h. Notwithstanding anything herein to the contrary, Seller agrees to defend (with counsel reasonably acceptable to Buyer), indemnify and hold Buyer harmless from any and all claims of personal injury or damage to personal property resulting from Seller's performance of Corrective Action at the premises. In order to receive the protections of this paragraph, Buyer must first: (1) be in compliance with all terms of the Offer to Purchase including, but not limited to, this Exhibit "B"; (2) give Seller written notice, by notice to the Manager - Real Estate, Marathon Ashland Petroleum LLC, 539 South Main Street, Findlay, Ohio 45840, promptly, but in any event not more than twenty (20) days, after Buyer obtains actual knowledge of the matter which is claimed to be covered by this paragraph; and (3) tender defense of the matter to Seller. The protections of this paragraph shall not apply to claims arising out of the acts or omissions of Buyer. Furthermore, Seller's obligations under this paragraph shall not apply to any matter to the extent that Seller is prejudiced due to an untimely notification from Buyer. Buyer agrees to cooperate in any defense provided by Seller pursuant to this paragraph.

i. Seller shall defend (with counsel reasonably acceptable to Buyer), indemnify and hold Buyer harmless from any and all liabilities, claims, losses, suits, actions, judgments, damages, costs (including reasonable attorneys' fees) or penalties levied or asserted against Buyer by an Independent Third Party, including but not limited to claims arising under the Environmental Laws, resulting from the Existing Contamination. In order to receive the protections of this paragraph, Buyer must first: (1) be in compliance with all terms of the Offer to Purchase including, but not limited to, this Exhibit "B"; (2) give Seller written notice, by notice to the Manager - Real Estate, Marathon Ashland Petroleum LLC, 539 South Main Street, Findlay, Ohio 45840, promptly, but in any event not more than twenty (20) days, after Buyer obtains actual knowledge of the matter which is claimed to be covered by this paragraph; and (3) tender

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SELLER'S INITIALS:

BUYER'S INITIALS:

defense of the matter to Seller. The protections of this paragraph shall not apply to liabilities, claims, losses, suits, damages, costs or penalties arising out of the acts or omissions of Buyer. Furthermore, Seller's obligations under this paragraph shall not apply to any matter to the extent that Seller is prejudiced due to an untimely notification from Buyer. Buyer agrees to cooperate in any defense provided by Seller pursuant to this paragraph. Notwithstanding anything herein to the contrary, the obligation of Seller to defend, indemnify and hold Buyer harmless as provided in this paragraph shall expire and no longer be enforceable after Seller obtains a "no further remediation/action" letter, or its functional equivalent, indicating that Seller has satisfied the minimum requirements of the Agency regarding the Existing Contamination. Such "functional equivalent" may include, but is not limited to, a decision of the Agency not to audit a closure or corrective action completion report submitted by Seller. The term "Independent Third Party" shall mean any person or entity other than Buyer: (1) who is not an agent of Buyer; and (2) who does not claim through Buyer. A person or entity who claims through Buyer includes, but is not limited to, Buyer's affiliates, employees, representatives, successors (including without limitation successors in title to the premises), assigns or other related persons, parties, or entities of Buyer.

3. BUYER'S RIGHT TO INSPECT PREMISES:

a. For a period of thirty (30) days after the final execution of the Offer to Purchase by both parties (the "Inspection Period"), Buyer and its agents are hereby granted access to the premises and shall have the right to undertake a complete site investigation (the "Investigation") including, but not limited to, an environmental audit (which may include a physical inspection of the premises, a review of environmental records, and such tests as are customarily undertaken to complete an environmental audit), determination of any zoning and building restrictions or regulations, soil compaction tests, survey work, wetlands analyses, and other such physical inspections or tests. Buyer agrees that prior to Buyer's Investigation that Buyer shall provide notification to Seller by notice to Manager – Corporate Environmental, Speedway SuperAmerica LLC, 500 Speedway Drive, Enon, OH 45323 (Phone: (937)863-6515 and Fax: (937)863-6078) (hereinafter, "Seller's Environmental Manager"), with a site plan denoting the proposed soil boring locations, if any, for Seller's prior review and approval, which approval shall not be unreasonably withheld. Buyer further agrees that Seller or Seller's representative shall be present during said Investigation and Seller shall have the right to take split samples at Seller's sole cost. Buyer shall be responsible for all soil cuttings and other materials generated in the soil boring event and Buyer shall restore the premises after such boring event to substantially the same state as was the premises prior to such event. Upon Buyer's receipt of any written report of said Investigation, Buyer shall furnish a copy of said report and copies of all analytical data to Seller by notice to Seller's Environmental Manager within 24 hours of receipt of the lab reports in order to permit Seller to satisfy regulatory reporting requirements, if necessary. However, notwithstanding the foregoing, in the event free petroleum products or strong vapors are discovered on the premises or within storm drains on the premises during said Investigation, Buyer shall immediately, but no later than one (1) hour after such discovery, notify Seller by notice to Seller's Environmental Manager in order to permit Seller to address safety issues, environmental reporting requirements and provide emergency response, if necessary. In the event that Buyer's Investigation reveals contamination at the premises at levels such that the premises cannot be used for Buyer's intended use, then Buyer shall have the right to cancel this Offer to Purchase by providing written notice to Seller: (1) stating that Buyer is terminating the Offer to Purchase as a result of Buyer's dissatisfaction with the condition of the premises; (2) briefly itemizing the specific environmental or other matters deemed unsatisfactory

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SELLER'S INITIALS: 

BUYER'S INITIALS: 

by Buyer; and (3) including any and all reports received by Buyer in the course of the Investigation. Said written notice must be received by Seller no later than the last day of said Inspection Period. If Buyer terminates the Offer to Purchase pursuant to the terms of this paragraph, then all earnest money paid by Buyer shall be disbursed to Buyer and neither party shall have any further obligations hereunder. If Seller fails to receive a written notice of termination from Buyer on or before the last day of the Inspection Period, Buyer shall be deemed to have elected to purchase the premises in its existing "as is" condition subject to the terms and conditions of the Offer to Purchase, including this Exhibit "B".

b. Buyer must utilize a contractor approved by Seller to conduct the Investigation. The approved contractor must have Contractor Environmental Liability Insurance to cover losses from pollution conditions that arise from the ongoing operations and completed operations of the contractor hereunder, including bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; and defense costs. Said policy shall be written on an occurrence basis, with limits of One Million Dollars (\$1,000,000) per occurrence. Furthermore, the contractor must have in effect Comprehensive General Liability and Business Automobile Liability policies, both of which shall have at least One Million Dollars (\$1,000,000) per occurrence coverage, in addition to Worker's Compensation and Employer's Liability policies at the statutory rate of coverage. The Worker's Compensation and Employer's Liability policies shall provide a waiver of subrogation in favor of Seller. Prior to entering the premises, Buyer must provide Seller with certificates of insurance which document that all coverage and the endorsements as required and referenced above have been obtained and naming Seller as an additional insured on all policies identified above, except Worker's Compensation and Employer's Liability, with said notice to Seller's Environmental Manager.

c. If this transaction proceeds through closing, the written report(s) of Investigation, including any environmental audit conducted by Buyer, shall be included in Exhibit "C".

d. Buyer expressly agrees to defend, indemnify and hold Seller harmless from any and all liabilities, claims, losses, suits, actions, judgments, damages, costs (including reasonable attorneys' fees) or penalties arising out of Buyer's exercise of its right to conduct said Investigation. Whenever the exercise of these Investigation rights results in the disturbing of the surface of the premises, said surface shall, as soon as reasonably possible, be restored by Buyer at Buyer's cost and expense and returned to substantially its same condition which existed prior to the exercise of said Investigation rights.

e. Notwithstanding anything herein to the contrary, if the Investigation reveals the existence of a substantial environmental condition, in Seller or Buyer's reasonable judgment, then Seller or Buyer shall have the right to cancel this Offer to Purchase, in which case all earnest money paid by Buyer shall be disbursed to Buyer and neither party shall have any further obligations hereunder.

4. **SELLER'S RESPONSIBILITIES:** Seller will observe any and all local, state and federal environmental laws and regulations applicable to its performance of Corrective

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Action to address Existing Contamination at the premises. If the Agency requires Seller to perform additional Corrective Action subsequent to the date of closing and also subsequent to Seller's completion of its original Corrective Action in connection with a release of petroleum hydrocarbons on the premises resulting from Seller's former operations thereon, Seller will be responsible for, and bear the costs of, such activities only if, when and as required by the Agency.

5. **CONDITION OF PREMISES:** Except as set forth in Sections 1 and 2 above, Buyer expressly agrees that: (i) Seller has not made and makes no representations as to the condition of said premises, including, but not limited to, the condition of the soil or groundwater, as they relate to environmental contamination or otherwise, zoning, building code violations, building lines, building construction, use and occupancy restrictions (and violations of any of the foregoing), and availability of utilities; and (ii) Buyer assumes all responsibility for any damages caused by the condition of or conditions on the premises upon transfer of title. Buyer also expressly agrees that, except for claims of breach of this Offer to Purchase (including this Exhibit "B") by Seller, Buyer shall never institute litigation against Seller alleging damages to Buyer resulting from any condition of the premises, and Buyer expressly waives any right which it may now have or may ever acquire against Seller for any condition of said premises.

6. **BUILDING LOSS:** If the building on said premises, if any, is destroyed prior to the date of closing, Buyer may terminate the Offer to Purchase by written notice to Seller. On such termination, all earnest money paid by Buyer shall be disbursed to Buyer and neither party shall have any further obligations hereunder. If Buyer fails to give such notice of termination to Seller within fifteen (15) days of Buyer's receipt of notice of said destruction, then the Offer to Purchase, including this Exhibit "B", shall continue in full force without any reduction in the purchase price by reason of such destruction or damage.

7. **PARTIAL BUILDING LOSS:** In the event of partial loss to the building on said premises, if any, prior to closing, Seller shall have a reasonable time to repair the damage and if Seller fails or refuses to do so, Buyer may take the premises "as is" subject to the terms and conditions of the Offer to Purchase, including this Exhibit "B", or Buyer may cancel the Offer to Purchase, in which case all earnest money paid by Buyer shall be disbursed to Buyer and neither party shall have any further obligations hereunder. If Buyer fails to give written notice of cancellation to Seller within fifteen (15) days from receipt of written notice from Seller that Seller will not repair the damage, then the Offer to Purchase, including this Exhibit "B", shall continue in full force without any reduction in the purchase price by reason of such partial loss.

8. **DEED LANGUAGE:** The following language shall be incorporated in the deed of conveyance to Buyer:

"This deed is subject to the following reservations, restrictions and conditions which shall be covenants running with the land and shall be binding upon Grantee, its successors, assigns and all future owners of the premises, and their respective directors, officers, employees, contractors, agents, representatives, lessees, licensees, invitees, and any user or occupant of all or any portion of the premises (collectively, "Grantee", for purposes of these reservations, restrictions and conditions):

1. **Speedway SuperAmerica LLC, its successors and assigns ("Grantor") reserves the right to enter upon the premises, at no cost to Grantor, at**

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reasonable times to conduct any Corrective Action only as and when required by the governmental agency with jurisdiction (the "Agency") in connection with a release of petroleum hydrocarbons at the premises. Seller shall use its best effort to provide notice to Buyer when it plans to enter the Premises to conduct Corrective Action. As used herein, the term, "Corrective Action", shall refer to one or more of the following activities: investigation, assessment, monitoring, sampling, analysis, cleanup, removal, disposal, on-site treatment, off-site treatment, active remediation, passive remediation, remediation alternatives including but not limited to risk-based corrective action ("RBCA"), if applicable, and/or other activities approved, concurred in or required by the Agency. In performing any Corrective Action at the premises, Grantor will have the right to rely on and use any current, future or revised or amended state cleanup/remediation standards, guidelines or criteria or revised federal cleanup/remediation standards, if applicable, including without limitation any site-specific risk-based soil and groundwater cleanup objectives or other similar RBCA policies administered by the Agency. In performing any Corrective Action at the premises, Grantor may also rely on and implement institutional controls as provided for in applicable laws, regulations and policies to ensure the protection of public health, safety or welfare and the environment. Grantee acknowledges that such institutional controls may require deed recordation running with the land at the premises. Such deed recordation would contain certain restrictions based on site-specific exposure such as prohibiting the use of groundwater at the premises, requiring that the use of the premises remain commercial/industrial, or requiring the premises, or a portion of the premises, to be paved or that existing pavement remain in place and be properly maintained. Grantee agrees to permit reasonable institutional controls regarding the premises in connection with Grantor's performance of any Corrective Action thereon. Grantee agrees to provide Grantor, at no cost to Grantor, with Grantee's written consent and signature as needed in connection with the preparation, execution and recording of any necessary documents relating to any institutional controls which are to be recorded on the premises as part of Grantor's performance of Corrective Action. Such institutional controls, if necessary, would not prohibit the use of the premises for industrial/commercial purposes. Grantor reserves its legal appeal rights with respect to any orders, directives or requests of the Agency concerning but not limited to Corrective Action at the premises. Grantee agrees that Grantee will not engage in any activity which would unreasonably interfere with Grantor's performance of any Corrective Action at the premises. In the event that Grantee unreasonably interferes with Grantor's performance of Corrective Action, Grantee agrees to pay Grantor for the reasonable costs incurred by Grantor as a result of any such interference, including, but not limited to, costs to replace monitoring wells that are damaged or destroyed by Grantee's activities.

2. The use of the premises shall be restricted solely to industrial/commercial use., provided, however, Buyer may use the Premises for any municipal purpose, as long as no residential structures are constructed on the Premises.

.3. The installation and/or existence of potable wells on the premises is prohibited. The groundwater underneath the premises shall not be used for any purpose whatsoever. This restriction, however, does not prohibit the installation or

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use of any compliance wells, or any groundwater monitoring, recovery or extraction wells or similar devices, used for or related to the performance of any Corrective Action.

4. Provided that Grantee reasonably performs its obligations set forth herein, Grantee shall not have any claim against Grantor, or Grantor's parent companies, affiliates, predecessors, successors, assigns, subsidiary companies or their respective past, present and future officers, employees, agents and/or representatives (collectively, the "Released Parties"), based upon, related to or arising out of the presence of any contamination on, under or at the premises. The Released Parties are hereby forever released from any and all such claims including, but not limited to, any and all claims and statutory causes of action under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Clean Water Act, the state law equivalents of such acts, state and federal underground storage tank laws and regulations and all other environmental laws and regulations, all as amended. This release shall not apply to claims of breach of that certain Offer to Purchase (including Exhibit "B") dated August 19, 2004, between Grantor and Grantee that may arise in the future.

5. Grantee agrees to adhere to, and comply with, the terms of any closure or no further action/remediation letter or determination from the Agency regarding Grantor's performance of Corrective Action.

6. Grantee hereby agrees to defend (with counsel reasonably acceptable to the Released Parties), indemnify and hold the Released Parties (as defined above) harmless from and against any and all liabilities, claims, losses, suits, actions, judgments, damages, costs (including reasonable attorneys' fees) or penalties that result from, arise out of or relate in any way to any violation of the reservations, restrictions and/or conditions contained in this deed.

7. In case any one or more of the reservations, restrictions or conditions (or portions thereof) contained in this deed shall, for any reason, be held to be invalid, illegal or legally unenforceable, in any respect, such invalidity, illegality or unenforceability shall not affect any other portion of that provision or any other provision hereof (whether or not clearly divisible from such provision or portion thereof), and the above reservations, restrictions and conditions shall be construed and interpreted in the manner which is valid, legal and legally enforceable, and which is most nearly consistent with the intention of Grantor and Grantee as evidenced by the above reservations, restrictions and conditions."

9. **RETENTION OF RIGHTS:** Buyer agrees that Seller retains all its rights from the applicable State underground storage tank fund for eligible costs incurred by Seller (both prior to and after the sale of the premises) in connection with Seller's performance of any Corrective Action at the premises. Additionally the parties agree that any money expended by Seller for Corrective Action which is later reimbursed by a state fund or recovered from a third party shall be paid over to Seller by Buyer if and when such funds are received by Buyer. Any money expended by Buyer for Corrective Action which is later reimbursed by a state fund or recovered

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from a third party shall be paid over to Buyer by Seller if and when such funds are received by Seller. Each party shall give all reasonable cooperation to the other party in connection with all applications for such reimbursement, including any assignment of the proceeds of such reimbursement to the other party, where such an assignment is executed pursuant to this section 9.

If the Environmental Laws governing the state reimbursement fund prohibit the assignment of reimbursement rights, Seller shall, if eligible to do so, at Buyer's option and sole expense, make application for reimbursement in Seller's own name and remit to Buyer any such reimbursement funds received for monies expended by Buyer for Corrective Action.

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EXHIBIT "C" (Condition of Premises)

to
Offer To Purchase
between

The City of Mason (Buyer)

and

Speedway SuperAmerica LLC (Seller)

Report(s) of tests and investigations conducted
prior to closing, incorporated herein:

1. All those reports associated with a prior release for which a No Further Action letter was obtained and dated 6-19-00.
2. Copies of the tank removal report and closure assessment will be provided to Buyer when available.