

## AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE ("Agreement") is made and entered into as of the Effective Date (as hereinafter defined) between PROPERTIES OF TERRA FIRMA, INC., an Ohio corporation ("Seller"), and THE CITY OF MASON, OHIO, an Ohio municipal corporation (the "City") under the following circumstances:

A. Seller has the contractual right to purchase the real property consisting of approximately 398 acres, located in Union Township, Warren County, Ohio as approximately shown on Exhibit A attached hereto and made a part hereof (the "Entire Property").

B. The City desires to purchase and acquire the portions of the Entire Property containing approximately 178 acres, as approximately shown on Exhibit A attached hereto as "Parcel A" and "Parcel B".

C. Seller is willing to sell and convey to the City Parcel A and Parcel B pursuant and subject to the terms and conditions contained herein, and City is willing to assist Seller or its successors or assigns with the development of the portion of the Entire Property not being sold to the City, as approximately shown on Exhibit A as "Parcel C", and provided Seller elects to acquire the same, the real property located adjacent to the Entire Site and being approximately shown on Exhibit A as "Parcel D", which assistance shall include annexing Parcel C and Parcel D into the boundaries of the City.

In consideration of the mutual covenants, undertakings and agreements contained below, Seller and the City covenant, undertake and agree as follows:

**Section 1. Agreement to Sell.** Seller hereby agrees to sell to the City, and the City hereby agrees to purchase from Seller, for the Purchase Price (as hereinafter defined) on and subject to the terms and conditions set forth in this Agreement, fee simple interest in and to the following:

A. The land comprising Parcel A and Parcel B, together with all structures and improvements thereon, all fixtures therein or thereto and all privileges, easements and appurtenances pertaining thereto, including all of Seller's right, title and interest in and to any adjacent or adjoining streets, alleys, or rights-of-ways and any strips or gores acquired by Seller when Seller purchases the same ("Real Property");

B. All buildings, fixtures, mechanical systems and other improvements ("Improvements") located on Parcel A and/or Parcel B; and

C. The lease and tenancy created by the Lease evidenced by the Memorandum of Lease recorded at Official Record Book 4614, Page 529 of the Warren County, Ohio Records (the "Klasmulch Lease") with Klasmulch, Inc. ("Klasmulch").

D. The unrecorded farm lease (the "Farm Lease") with Fred Vonderhaar (the "Farm Tenant").

E. A Right of First Refusal in favor of Seller allowing the Seller to repurchase the Property or any portion thereof if the City elects to sell any portion or all of the Property to any third party for development for residential purposes or to develop the same for residential

purposes. The right of first refusal shall be contained in a recordable agreement (the "Right of First Refusal Agreement") to be executed and recorded. If the City is selling the Property in question to a third party for residential development, then the purchase price and other terms shall be the same as being offered by such third party and which are acceptable to the City. If the City is developing the Property for residential purposes, then the Purchase Price shall be equal to the Purchase Price paid by the City hereunder (prorated on an acreage basis, if less than all the Property is involved). Purchaser must exercise the right of first refusal within thirty (30) days after receiving notice and the details of the proposed transaction triggering the right of first refusal.

All of the above-described property interests are collectively referred to herein as the "Property."

**Section 2. Purchase Price and Earnest Money.**

A. The aggregate purchase price ("Purchase Price") to be paid by the City to Seller for the Property is approximately Three Million One Hundred Fifteen Thousand Dollars (\$3,115,000.00). The exact Purchase Price will be calculated based on Seventeen Thousand Five Hundred Dollars (\$17,500.00) per acre of the Real Property, to be determined by the survey to be provided pursuant to Section 4. The Purchase Price shall be paid as follows: (i) Three Hundred Thousand Dollars (\$300,000.00) (the "Earnest Money") shall be deposited by the City in escrow with Center Title, LLC (the "Escrow Agent") within three (3) days after the Effective Date; subject to the terms and conditions of the Escrow Agreement attached hereto as Exhibit C, and (ii) the remainder of the Purchase Price shall be payable in cash or cash equivalent at the Closing (as hereinafter defined).

B. If the transaction for the Property contemplated hereby is consummated in accordance with the terms and provisions hereof, the Earnest Money shall be applied to the Purchase Price at the Closing. If the transaction is not so consummated, the Earnest Money shall be held and delivered by the Escrow Agent as herein provided.

**Section 3. Title Commitment.** Within five (5) days of the Effective Date, Escrow Agent shall cause to be delivered to the City:

1. An Owner's Commitment for Title Insurance (the "Title Commitment") issued by Escrow Agent committing to issue an insurance policy for fee simple title to the Real Property for the City in the amount of the Purchase Price, which Title Commitment shall set forth the status of the title of the Real Property and shall show all encumbrances and other matters relating to the Property, which shall include those listed on Exhibit B attached hereto and made a part hereof and the above described leases and Right of First Refusal Agreement (the "Permitted Exceptions"); and

2. A legible copy of all documents included in the Permitted Exceptions, including but not limited to plats, reservations, restrictions, and easements ("Title Documents").

**Section 4. Survey Products.**

Prior to Closing, Seller shall cause to be prepared and delivered any boundary plats, legal descriptions and closure tables as necessary to cause the Real Property to be transferred as one or more separate legal descriptions and tax parcels, but only to the extent required by Warren County, Ohio in order to transfer the Real Property. Seller shall provide the City, for its

review and approval, with all boundary plats, legal descriptions and closure tables no later than June 16, 2014. Any other survey products desired by the City shall be obtained by the City at the City's sole expense.

**Section 5. Leases.** The City acknowledges that Klasmulch may exercise a right of first refusal for the portion of the Property encumbered by the Klasmulch Lease, and Seller shall notify the City promptly upon Seller's determination of Klasmulch's intent with respect to its right of first refusal. If Klasmulch exercises the right of first refusal, then the Property purchased by the Tenant shall be excluded for all purposes with a proration of the Purchase Price based on acreage, the City shall purchase and acquire the remainder of the Property and the Klasmulch Lease shall be terminated. If Klasmulch does not exercise the right of first refusal, the City shall purchase all of the Property, subject to the Klasmulch Lease and the Farm Lease as to the leased portions of the Property, and the Klasmulch Lease shall be assigned to and assumed by the City as contemplated by the term of this Agreement for the remainder of its term. The Farm Lease will be assigned to and assumed by the City at Closing; provided, however, the City may terminate the Farm Lease in whole or in part so long as the City pays the tenant thereunder an amount equal to Five Hundred Sixty-Nine Dollars (\$569.00) per acre of any crops destroyed by the City prior to the harvest of the same. In addition, all amounts due from the tenant under the Farm Lease with respect to the 2014 crop season shall be paid to Seller, which obligation shall survive the Closing.

**Section 6. City's Conditions.**

A. The City's obligation to close on the acquisition of the Property shall be subject, but not limited to the environmental contingency contained in this Section 6. Seller shall cause the Property to be available for the City and its consultants to enter and to conduct such environmental audits and inspections as the City desires, provided however, the City shall provide advance notice to Seller prior to entering upon the Property and permit Seller to be in attendance for any such audits or inspections. The City shall provide, or cause its consultants to provide, general public liability insurance in an amount of at least One Million Dollars (\$1,000,000.00) per occurrence covering the activities of the City and its consultants while on the Property and deliver Certificates evidencing such insurance coverage naming Seller and the current owners of the Property as additional insureds. The City shall cause any portion of the Property damaged or destroyed by the activities by the City or its consultants on the Property to be restored to its original condition, which obligation shall survive the termination of this Agreement or the Closing for a period of 3 months. If the City is not satisfied with the results of the environmental audits and inspections, or any other inspections, and as set forth in Section 6 B below, in the City's sole determination, then the City may terminate this Agreement by written notice to Seller on or before the date of Closing, and City shall receive a refund of the Earnest Money.

B. The City's obligation to close on the acquisition of the Property shall be subject to the City's review and investigation of the Property, and all conditions and circumstances surrounding and affecting the same, including but not limited to all title examination, title updates, and survey(s), and the City's approval of the same, in the City's sole determination.

C. If the City terminates this Agreement prior to Closing pursuant to the terms and conditions of this Section 6, then the Earnest Money (less One Hundred Dollars (\$100.00) independent consideration, which shall be paid to Seller) shall be returned to the City and neither Seller nor the City shall have any further obligations to each other hereunder, except for those obligations of the City which are stated to survive the termination of this Agreement.

## **Section 7. Closing.**

A. The Closing ("Closing") of the sale of the Property by Seller to the City shall be conducted through an escrow closing, on a date to be selected by the City with at least ten (10) days advance notice to Seller, but no later than July 1, 2014 (such date being referred to herein as the "Closing Date").

B. At the Closing, all of the following shall occur, all of which shall be deemed concurrent conditions:

1. Seller, at Seller's sole cost and expense, shall deliver or cause to be delivered to the City the following:

a. A Limited Warranty Deed ("Deed"), in the form attached hereto, fully executed and acknowledged by Seller, conveying marketable title, free, clear and unencumbered to the City, to the Property, subject to the Permitted Exceptions, including the Farm Lease, the Klasmulch Lease and the Right of First Refusal Agreement;

b. An Assignment and Assumption of the Lease affecting the Property, unless the Tenant exercises its right of first refusal under the Lease;

c. Tenant Notice Letters to be sent to Klasmulch and to the Farm Tenant notifying them of the change in ownership and instructing them to perform all future obligations to the City, in form reasonably satisfactory to the City and Seller, unless Klasmulch exercises its right of first refusal with respect to the portion of the Property encumbered by the Klasmulch Lease;

d. Evidence reasonably satisfactory to the City and the Escrow Agent that the person executing the closing documents on behalf of Seller has full right, power, and authority to do so;

e. A proper affidavit by Seller, providing Seller's U.S. taxpayer identification number and stating that Seller is not a "foreign person" as defined in 26 U.S.C. Section 1445;

f. Affidavit of Title in a form reasonably acceptable to Seller and City and to the Escrow Agent; and

g. The Right of First Refusal Agreement.

2. The City, at the City's sole cost and expense, shall deliver or cause to be delivered to Seller the following:

a. A certified or cashier's check or wire transfer, payable to the order of Escrow Agent in an amount of money equal to the Purchase Price less the Earnest Money, subject to adjustments as provided in Section 5 of this Agreement;

b. Evidence reasonably satisfactory to Seller and the Escrow Agent that the person executing the closing documents on behalf of the City has full right, power, and authority to do so;

c. The Assignment and Assumption of Leases duly executed by the City; and

d. The Right of First Refusal Agreement.

3. Seller and the City shall each pay their respective attorneys' fees and one half of the Closing escrow fees. Seller shall pay all recording fees, transfer taxes, conveyance fees or documentary stamps associated with the recordation of the Deed. Seller and the City shall each pay one-half of survey services necessary to transfer the Property as described above in Section 4 and the City shall be solely responsible for all other survey services or products desired by the City.

4. The City shall pay the premium for an Owner's Policy of Title Insurance ("Owner Policy") and the other title insurance fees or costs charged by the Escrow Agent for the issuance of the title insurance policy desired by the City.

C. Ad valorem and similar taxes and assessments relating to the Property shall be prorated between Seller and the City as of the Closing Date based on the current valuation and use of the Property. If the amount of such real estate taxes cannot be determined at the Closing, they shall be apportioned on the basis of the taxes and assessments assessed for the preceding year. If, post-Closing, the City is required to pay agricultural recoupment due to the change in the use of the Property, if any part of such recoupment is for tax savings due to the agricultural use of the Property prior to Closing, then within thirty (30) days after request by the City and the submission by the City of the bills for the recoupment, together with a calculation of the amount of such bill allocable for savings incurred prior to the Closing, Seller shall pay its proportionate share of such recoupment. Seller's obligations hereunder shall survive the Closing.

D. Except to the extent Klasmulch exercises its right of first refusal, all rentals actually received by Seller for the month in which the Closing occurs shall be prorated through the Closing Date, based on information available as of the Closing Date. To the extent actually received by Seller prior to the Closing Date, Seller shall deliver to the City at the Closing all advance payments or rentals that are due for a period that is subsequent to the month in which the Closing occurs. All rent and other sums due during the month in which the Closing occurs that are received by either party after the Closing Date shall be prorated as of the Closing Date and paid to the respective party within fifteen (15) days following the month in which the Closing occurs or when received. Seller shall have the right to pursue collection from tenants any amounts due from such tenants to Seller for periods prior to Closing.

E. Upon Closing, Seller shall deliver to the City exclusive possession of the Property, subject to the Permitted Exceptions.

**Section 8. City's Development Related Obligations.**

A. The City agrees to utilize all available rights and methods to cause Parcel C and, when requested by Seller, Parcel D to be annexed into the City as soon as possible. Such efforts shall include utilizing all available legal procedures for seeking, obtaining, and defending any appeal or challenge to such annexation. Seller agrees to utilize all available rights and methods to assist City and cooperate with City with respect to such annexation or annexations.

B. The City covenants that, on or before October 1, 2014, the City will cause sewer mains to be installed to the boundary of Parcel C and all pumps, lift stations and related infrastructure improvements to be installed such that sewer services will be available to Parcel C and Parcel D with capacities sufficient to service Seller's intended residential development on Parcel C and Parcel D without any cost to Seller or to any future owners of Parcel C or Parcel D. Seller or any future owners of Parcel C and Parcel D shall still be required to pay normal and customary tap fees, which include an expansion fee with each tap. The City shall cooperate with the efforts by Seller or its successors or assigns to provide water service to Parcel C and Parcel D and the developments to be located thereon.

C. As long as Parcels C and D are owned by Seller, the City covenants not to initiate any zone change with respect to Parcel C or Parcel D without the approval of Seller, and the City agrees and acknowledges that Parcel C and Parcel D may be developed under the City's R-1 residential zoning classification or the Seller may pursue rezoning concurrently with or after the annexation process.

D. All of the City's obligations under this Section 8 shall survive the Closing and shall also survive any termination of this Agreement by the City pursuant to Section 6, as long as Seller retains ownership of any portion of Parcel C and/or Parcel D, but in no event shall these City obligations under this Section 8, extend beyond ten (10) years from the date of Closing or the City's termination of this Agreement, prior to Closing.

**Section 9. AS-IS Sale.**

A. The City expressly acknowledges that, except as expressly provided herein, the Property is being sold and accepted **AS-IS, WHERE-IS**, and Seller makes no representations or warranties with respect to the physical condition or any other aspect of the Property, including, without limitation, (i) the structural integrity of any improvements on the Property, (ii) the manner, construction, condition, and state of repair or lack of repair of any of such improvements, (iii) the conformity of the improvements to any plans or specifications for the Property, including but not limited to any plans and specifications that may have been or which may be provided to the City, (iv) the conformity of the Property to past, current or future applicable zoning or building code requirements or the compliance with any other laws, rules, ordinances, or regulations of any government or other body, (v) the financial earning capacity or history or expense history of the operation of the Property, (vi) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition, or otherwise, (vii) the existence of soil instability, past soil repairs, soil additions or conditions of soil fill, susceptibility to landslides, sufficiency of under-shoring, sufficiency of drainage, (viii) whether the Property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, (ix) the existence or non-existence of asbestos, underground or above ground storage tanks, hazardous waste or other toxic or hazardous materials of any kind or any other environmental condition or whether the Property is in compliance with applicable laws, rules and regulations, (x) the Property's investment potential or resale at any future date, at a profit or

otherwise, (xi) any tax consequences of ownership of the Property or (xii) any other matter whatsoever affecting the stability, integrity, other condition or status of the land or any buildings or improvements situated on all or part of the Property (collectively, the "Property Conditions"), and except for warranties and representations expressly provided herein, **THE CITY HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS THE CITY MIGHT HAVE REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE** relating to the Property, its improvements or the Property Conditions, such waiver being absolute, complete, total and unlimited in any way.

B. If and to the extent that Seller delivers documents, reports (including any environmental reports) or other writings concerning the Property (collectively, with the Review Items described in Section 4, the "Review Items") to the City, all such Review Items shall be delivered without any representation or warranty as to the completeness or accuracy of the data or information contained therein, and all such Review Items are furnished to the City solely as a courtesy, and Seller has neither verified the accuracy of any statements or other information therein contained, the method used to compile such information nor the qualifications of the persons preparing such information. The Review Items are provided on an **AS-IS-WHERE-IS BASIS, AND THE CITY EXPRESSLY ACKNOWLEDGES THAT SELLER MAKES NO REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE AS TO THE REVIEW ITEMS.**

C. Subject only to the specific representations and warranties of Seller contained herein, after the Closing, as between Seller and the City, the City shall be solely responsible for causing the Property to be in compliance with all regulations, rules, laws or ordinances that may apply to the Property or any part thereof and the continued ownership, maintenance, management and repair of the Property (the "Requirements"), Property Conditions, and all other aspects of the Property, whether the same shall be existing as of the Closing Date or not. Except as expressly provided herein, and subject to the specific representations and warranties of Seller contained herein, to the fullest extent permitted by law, the City hereby waives any and all rights and benefits which it now has, or in the future may have, conferred upon it by virtue of any applicable state, federal, or local law, rule, or regulation as a result of any alleged inaccuracy or incompleteness of the information or the purchase of the Property, including, without limitation, any environmental law, rule, or regulation whether federal, state or local, including, without limitation, the Comprehensive Response, Compensation and Liability Act of 1980 (42 U.S.C. §§9601 et seq.) as amended by the Superfund Amendments and Reauthorization Act of 1986, and any analogous federal or state laws. With respect to the City's waiver of the above, the City represents and warrants to the Seller that: (a) The City is not in a significantly disparate bargaining position; (b) The City is represented by legal counsel in connection with the sale contemplated by this Agreement and (c) The City is knowledgeable and experienced in the purchase, operation, ownership, refurbishing and sale of commercial real estate, and is fully able to evaluate the merits and risks of this transaction.

D. Notwithstanding anything herein to the contrary, all of the terms and provisions of this Section 9 shall survive the Closing or a termination of this Agreement, as long as Seller retains ownership of any portion of Parcel C and/or Parcel D, but in no event shall they extend beyond ten (10) years from the date of Closing or the City's termination of this Agreement.

**Section 10. Brokers.** The City and Seller hereby represent to each other that they have not contracted with or otherwise involved any broker, agent or finder entitled to a fee or commission as a result of the transaction contemplated by this Agreement.

**Section 11. Notices.**

A. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) delivered in person to the address set forth herein below for the party to whom the notice is given, (ii) delivered in person at the Closing (if such party is present at the Closing), (iii) placed in the United States mail, certified and return receipt requested, addressed to such party at the address hereinafter specified, (iv) deposited into the custody of Federal Express Corporation to be sent by Federal Express Overnight Delivery or other reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter specified, or (v) telecopied by facsimile transmission to such party at the telecopy number listed below, provided that such transmission is confirmed by telephone on the date of such transmission.

B. The address of the City for all purposes under this Agreement and for all notices hereunder shall be:

City of Mason, Ohio,  
Attention: Eric Hansen, City Manager  
6000 Mason Montgomery Road  
Mason, Ohio 45040[ehansen@masonoh.org](mailto:ehansen@masonoh.org)

with a copy to:

Jeffrey D. Forbes, Esq.  
Wood & Lamping LLP  
600 Vine Street, Suite 2500  
Cincinnati, Ohio 45202  
jdforbes@woodlamping.com

C. The address of Seller for all purposes under this Agreement and for all notices hereunder shall be:

Properties of Terra Firma, Inc.  
6279 Tri-Ridge Boulevard, Suite 340  
Loveland, Ohio 45140  
Attention: Richard A. Haglage  
Telephone: 513-248-5642  
Fax: 513-576-0268  
email: rhaglage@gmail.com

with a copy to:

Richard D. Herndon  
Griffin, Fletcher, Herndon, LLP  
3500 Red Bank Road

Cincinnati, Ohio 45227  
Telephone: 513-763-3517  
Fax: 513-421-1118  
rherndon@gfh-law.com

Notices may also be given by electronic mail, with the original notice being mailed by overnight courier service or United States Express Mail, in which event, the notice shall be deemed delivered on the date of electronic mail, provided that if the recipient of such notice given by electronic mail acknowledges receipt of such notice in writing (including by electronic mail), the original notice need not be delivered and such notice shall be deemed delivered on the date of the electronic mail. Notices may also be given by United States Express Mail or overnight courier service (with next business day delivery specified) in which event the notice shall be deemed delivered on the next business day.

D. From time to time either party may designate another address within the 48 contiguous states of the United States of America for all purposes of this Agreement by giving the other party not less than thirty (30) days' advance written notice of such change of address in accordance with the provisions hereof.

**Section 12. Entire Agreement.** This Agreement (including the exhibits hereto) contains the entire agreement between Seller and the City, and no oral statements or prior written matter not specifically incorporated herein shall be of any force and effect. No variation, modification, or changes hereof shall be binding on either party hereto unless set forth in a document executed by such parties or a duly authorized agent, officer or representative thereof.

**Section 13. Warranties and Representations.**

A. Seller makes the following representations and warranties to the City, which representations and warranties shall be deemed to be repeated by Seller as of the Closing Date:

1. Seller shall have fee simple ownership of the Property on the Date of Closing.
2. Seller has full power to enter into and perform this Agreement and perform its obligations hereunder;
3. Other than the Klasmulch Lease and the Farm Lease, Seller is not currently a party to any, and to Seller's knowledge, there are no, other leases, licenses or other similar occupancy agreements (oral or written) with respect to the leasing or occupancy of the Property.
4. Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the Income Tax Regulations thereunder.
5. The execution and delivery of this Agreement by Seller and Seller's performance of and compliance with its terms do not (a) violate any existing federal, state or local law, ordinance, rule, regulation or order, or (b) breach any agreement or other obligation to which Seller is a party or by which it is bound.
6. Seller has not engaged in any activity which has caused the Property or any part thereof to be contaminated by any materials that are governed or restricted in any way

by any laws, codes, regulations or rules intended to protect public health or safety or the environment (“Hazardous Materials”) in violation of any Requirements, nor, except as described in that certain Phase I Environmental Site Assessment (Project No. 22366(1)) prepared by Kilbane Environmental, Inc., dated March 7, 2014, a copy of which has been provided to the City, does Seller have any actual knowledge that any other person or entity has engaged in any such activity or contamination in violation of any Requirements, nor has Seller received any notice, written or otherwise, from any governmental agency alleging contamination of the Property by Hazardous Materials.

Sections 2 through 6 above shall survive the Closing for one year.

B. The City represents and warrants to Seller that this Agreement constitutes a valid and binding obligation of the City.

**Section 14. Assigns.** This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective legal representatives and successors. The City and Seller may not assign this Agreement to any other party. Notwithstanding the above provisions to the contrary, Seller may assign this Agreement to any entity owned by the shareholders of Seller, so long as the assignee is also the assignee of the Seller’s rights to acquire the Entire Property. No such assignment shall operate to release Seller from any of its obligations under this Agreement.

**Section 15. Effective Date.** The date on which this Agreement is executed by the last to sign of the Seller and the City shall be the “Effective Date” of this Agreement.

**Section 16. Time of the Essence.** Time is of the essence of this Agreement.

**Section 17. Termination, Default and Remedies.**

A. Provided Seller is not in default hereunder, if the City fails or refuses to consummate the purchase of the Property pursuant to this Agreement at the Closing when and if obligated to do so, then Seller, at Seller’s election, may sue for damages or for specific performance, or both, as Seller may elect, or Seller may terminate this Agreement by giving written notice thereof to the City prior to or at the Closing, whereupon the Earnest Money shall be paid to Seller, as liquidated damages, and neither party hereto shall thereafter have any further rights or obligations hereunder, except for those obligations specifically stated to survive the termination of this Agreement.

B. If Seller fails or refuses to consummate the sale of the Property pursuant to this Agreement at the Closing or fails to perform any of Seller’s other obligations hereunder either prior to or at the Closing for any reason other than the City’s failure to perform then the City, at City’s election, may sue for damages or for specific performance, or both, as the City may elect, and the City may terminate this Agreement by giving written notice thereof to the Seller prior to or at the Closing. Alternatively, the City may elect to terminate this Agreement by giving written notice thereof to Seller prior to or at the Closing, whereupon neither party hereto shall have any further rights or obligations hereunder, and Escrow Agent shall deliver the Earnest Money to the City.

C. In the event either Seller or the City becomes entitled to the Earnest Money, upon cancellation or termination of this Agreement in accordance with its terms, such party shall deliver notice to the Escrow Agent and the other party simultaneously with such termination

notice. In the event the other party objects to such disbursement of the Earnest Money, such party shall have five (5) business days to give the terminating party and Escrow Agent written notice of its objection to disbursement of the Earnest Money.

**Section 18. Terminology.** The captions beside the section numbers of this Agreement are for reference only and shall not modify or affect this Agreement in any manner whatsoever. Wherever required by the context, any gender shall include any other gender, the singular shall include the plural, and the plural shall include the singular.

**Section 19. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

**Section 20. Severability.** In case any one or more of the provisions contained in this Agreement 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 Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**Section 21. Rule of Construction.** The parties acknowledge that each party and its counsel has reviewed and revised this Agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

**Section 22. Business Days.** If the Closing Date or the day for performance of any act required under this Agreement falls on a Saturday, Sunday or legal holiday, then the Closing Date or the day for such performance, as the case may be, shall be the next following regular business day.

**Section 23. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original, but which together shall constitute one and same instrument.

**Section 24. Waiver.** The waiver by any party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or another provision of this Agreement.

**Section 25. Escrow Agent.** See the Escrow Agreement attached hereto and made part hereof as Exhibit C.

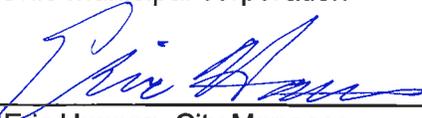
**Section 26. Expiration of Offer.** This Agreement shall constitute an offer only by Seller and shall not be binding upon either Seller or the City unless and until fully executed by both parties. Seller's offer to sell the Property to the City upon and subject to the terms and conditions contained herein shall be deemed to be automatically revoked and null and void unless this Agreement is fully executed by and delivered to both parties on or before June 12, 2014.

IN WITNESS WHEREOF, this Agreement is hereby executed as of the Effective Date.

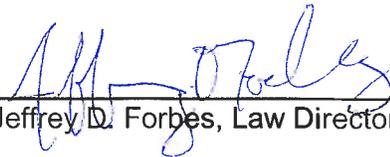
**CITY:**

Date: June 12, 2014

THE CITY OF MASON, OHIO,  
an Ohio municipal corporation

By:   
Eric Hansen, City Manager

Approved As to Form:

  
Jeffrey D. Forbes, Law Director

Date: 6/12, 2014

**SELLER:**

PROPERTIES OF TERRA FIRMA, INC.  
an Ohio corporation

By: Craig S. Kolb  
Name: CRAIG S. KOLB  
Title: Member

By its execution below, Escrow Agent acknowledges receipt of the Earnest Money described in this Agreement, and agrees to hold and deliver the same and perform its other duties pursuant to the provisions of this Agreement.

**ESCROW AGENT:**

Center Title, LLC

By: *Thomas S. Nicholas*  
Name: *Thomas Nicholas*  
Title: *member*

Date: June *13*, 2014

**EXHIBIT A**

**Plat Showing Entire Property, Parcel A, Parcel B,  
Parcel C, Parcel D and Leased Property (Klasmulch Property)**



Tract 1

**DESCRIPTION FOR:**

**ANITA M. TODOROV  
PATRICIA ANN JONES  
GERRI LYNN HESTER  
BRADLEY A. J ONES**

**LOCATION:**

**WARREN COUNTY, OHIO  
50.4664 Acres**

Situate in Section 20, Town 4, Range 3, Union Township, Warren County, Ohio and being 24.1961 acres of the 35.880 ac. parcel as conveyed to Anita M. Todorov, Trustee (1/2 int.) in Warren County Document Number 702339 (O.R. 4717, PG. 96) and Patricia Ann Jones, Gerri Lynn Hester & Bradley A. Jones, Successor Co-Trustees (1/2 int.) of the Ben Todorov Revocable Trust in Warren County Document Number 702338 (O.R. 4717, PG. 94 & Affidavit in O.R. 5435, PG.85) and also 26.2703 acres of the same parcel (Tract 1 & 2) as conveyed to Anita M. Todorov, Trustee (1/2 int.) in Warren County Document Number 702340 (O.R. 4717, PG. 98) and Patricia Ann Jones, Gerri Lynn Hester & Bradley A. Jones, Successor Co-Trustees (1/2 int.) of the Ben Todorov Revocable Trust in Warren County Document Number 702341 (O.R. 4717, PG. 104 & Affidavit in O.R. 5435, PG.85), records of the Warren County, Ohio Recorder's Office and also being more particularly described as follows:

Beginning at a set 5/8" iron pin at the intersection of the existing corporation line of the City of Mason with the southerly line of Indiana & Ohio Railroad, 100 feet in width, as shown on Connecting Railway R/W & Track Map dated 1917. Said intersection lying South 05°45'56" West, along said corporation line, 1,124.45 feet from the southeast corner of Avalon Farms Subdivision as recorded in Plat Book 60, Page 54, records of the Warren County, Ohio Recorder's Office;

Thence along southerly lines of said railroad, the following four (4) courses and distances:

- 1.) North 51°05'32" East, 439.93 feet to a set 5/8" iron pin;
- 2.) Along an arc deflecting to the right, having a central angle of 00°56'08", a radius of 17,174.88 feet and a length of 280.44 feet. The chord of said arc bears North 51°33'36" East, 280.43 feet to a set 5/8" iron pin;
- 3.) Along an arc deflecting to the right, having a central angle of 03°34'53", a radius of 5,367.30 feet and a length of 335.50 feet. The chord of said arc bears North 53°46'40" East, 335.44 feet to a set 5/8" iron pin;
- 4.) Along an arc deflecting to the right, having a central angle of 08°11'13", a radius of 5,641.53 feet and a length of 806.12 feet. The chord of said arc bears North 59°32'17" East, 805.44 feet to an existing 1/2" iron pin with cap (PS 5680);

Thence with a new division line, South 60°16'15" East, passing an existing 1/2" iron pin with cap (PS 5680) at 840.29 feet, a total distance of 880.41 feet to the centerline of US Route 42, currently 80 feet in width, as shown on right-of-plans of aforesaid Warren County and commonly known as project WAR-42 (3.42-10.30);



Thence along said centerline, along an arc deflecting to the left, having a central angle of  $00^{\circ}01'04''$ , a radius of 22,918.32 feet and a length of 7.15 feet. The chord of said arc bears South  $34^{\circ}06'22''$  West, 7.15 feet;

Thence continuing along said centerline, South  $34^{\circ}06'54''$  West, 1,394.88 feet to the northeasterly corner of lands conveyed to Minerva Schappacher, Trustee in Warren County Document Number 859483 (O.R. 5504, PG. 58), records of the Warren County, Ohio Recorder's Office;

Thence with a north line of said Minerva Schappacher, Trustee lands and in part, with the aforesaid corporation line, North  $84^{\circ}30'52''$  West, passing an existing 1" iron pipe at 45.57 feet, a total distance of 1,551.72 feet to an existing 8" square concrete post;

Thence with an east line of said Minerva Schappacher, Trustee lands and along said corporation line, North  $05^{\circ}45'56''$  East, 393.81 feet to the point of beginning.

Containing 50.4664 acres of land (24.1961 ac. from Parcel 12202000071 & 26.2703 ac. from Parcel 12202000050).

Subject to all legal highways, easements and restrictions of record.

The above description is the result of a survey prepared by McGill Smith Punshon, Inc. under the direction of Richard D. Nichols, P.S. No. 7929, dated June 12, 2014, the survey of which is recorded in

Volume 141, Page 8, Warren County Engineer's Record of Land Division.

Prepared by: McGill Smith Punshon, Inc.

Date: July 3, 2014

MSP No.: 13373.01

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Tract 2

**DESCRIPTION FOR:**

**ANITA M. TODOROV  
PATRICIA ANN JONES  
GERRI LYNN HESTER  
BRADLEY A. JONES**

**LOCATION:**

**WARREN COUNTY, OHIO  
5.5942 Acres**

Situate in Sections 14 & 20, Town 4, Range 3, Union Township, Warren County, Ohio and being part of the 35.880 acre parcel as conveyed to Anita M. Todorov, Trustee (1/2 int.) in Warren County Document Number 702339 (O.R. 4717, PG. 96) and Patricia Ann Jones, Gerri Lynn Hester & Bradley A. Jones, Successor Co-Trustees (1/2 int.) of the Ben Todorov Revocable Trust in Warren County Document Number 702338 (O.R. 4717, PG. 94 & Affidavit in O.R. 5435, PG.85), records of the Warren County, Ohio Recorder's Office and also being more particularly described as follows:

Beginning at a point in the centerline of US Route 42, currently 80 feet in width, as shown on right-of-plans of said county and commonly known as project WAR-42 (3.42-10.30), lying S 33°19'54" W, along said centerline, 237.72 feet from the intersection of said centerline with the west line of said Section 14;

Thence with new division lines, the following three (3) courses and distances:

- 1.) North 58°59'18" West, passing a set 5/8" iron pin at 40.03 feet, a total distance of 126.73 feet to a set 5/8" iron pin;
- 2.) North 67°33'33" West, 193.97 feet to a set 5/8" iron pin;
- 3.) North 60°17'49" West, 347.00 feet to a set 5/8" iron pin in the southerly line of Indiana & Ohio Railroad, 100 feet in width, as shown on Connecting Railway R/W & Track Map dated 1917;

Thence along said southerly line, North 65°46'58" East, 650.41 feet to an existing 1/2" iron pin with cap (PS 5680) in the southwest line of lands conveyed to Diane C. Vonderhaar in Warren County Document Number 234146 (O.R. 2129, PG. 947), records of the Warren County, Ohio Recorder's Office;

Thence along said southwest line, South 50°23'57" East, passing an existing 1/2" iron pin with cap (PS 5680) at 270.90 feet, a total distance of 316.30 feet to the aforesaid centerline of US Route 42;

Thence along said centerline, South 33°19'54" West, 450.57 feet to the point of beginning.

Containing 5.5942 acres of land of which 5.3094 acres lie within Section 20 and 0.2848 acres lie within Section 14.

Subject to all legal highways, easements and restrictions of record.



The above description is the result of a survey prepared by McGill Smith Punshon, Inc. under the direction of Richard D. Nichols, P.S. No. 7929, dated June 12, 2014, the survey of which is recorded in

Volume 141, Page 8, Warren County Engineer's Record of Land Division.

Prepared by: McGill Smith Punshon, Inc.

Date: July 3, 2014

MSP No.: 13373.01

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Tract 3

**DESCRIPTION FOR:**

**ANITA M. TODOROV  
PATRICIA ANN JONES  
GERRI LYNN HESTER  
BRADLEY A. J ONES**

**LOCATION:**

**WARREN COUNTY, OHIO  
106.5796 Acres**

Situate in Section 20, Town 4, Range 3, Union Township, Warren County, Ohio and being 102.2169 acres of the same parcel (Tract 1 & 2) as conveyed to Anita M. Todorov, Trustee (1/2 int.) in Warren County Document Number 702340 (O.R. 4717, PG. 98) and Patricia Ann Jones, Gerri Lynn Hester & Bradley A. Jones, Successor Co-Trustees (1/2 int.) of the Ben Todorov Revocable Trust in Warren County Document Number 702341 (O.R. 4717, PG. 104 & Affidavit in O.R. 5435, PG.85) and also a 4.3626 acre parcel as conveyed to Anita M. Todorov, Trustee (1/2 int.) in Warren County Document Number 702343 (O.R. 4717, PG. 112) and Patricia Ann Jones, Gerri Lynn Hester & Bradley A. Jones, Successor Co-Trustees (1/2 int.) of the Ben Todorov Revocable Trust in Warren County Document Number 702342 (O.R. 4717, PG. 110 & Affidavit in O.R. 5435, PG.85), records of the Warren County, Ohio Recorder's Office and also being more particularly described as follows:

Beginning at an existing "MAG" nail in the centerline of Bunnell Road, currently 60 feet in width, lying South 84°14'09" East, 468.91 feet from an existing spike at a northeast corner of Avalon Farms Subdivision as recorded in Plat Book 60, Page 54, records of the Warren County, Ohio Recorder's Office;

Thence along said centerline, South 83°58'06" East, passing an existing "MAG" nail at 675.10 feet, a total distance of 1,922.50 feet to a set nail in a west line of Indiana & Ohio Railroad, width varies, as shown on Connecting Railway R/W & Track Map dated 1917 and lying 54.50 feet and 91.33 feet, along said centerline, from the centerline of the existing tracks of said railroad;

Thence along lines of said railroad, the following six (6) courses and distances:

- 1.) Along a 5° arc deflecting to the right, having a central angle of 86°13'24", a radius of 1,146.28 feet and a length of 1,725.01 feet. The chord of said arc bears South 13°35'13" West, 1,566.79 feet to a set 5/8" iron pin;
- 2.) South 65°46'58" West, 410.65 feet to a set 5/8" iron pin;
- 3.) Along an arc deflecting to the left, having a central angle of 10°07'31", a radius of 5,741.53 feet and a length of 1,014.63 feet. The chord of said arc bears South 60°30'29" West, 1,013.31 feet to a set 5/8" iron pin;
- 4.) Along an arc deflecting to the left, having a central angle of 03°34'49", a radius of 5,466.16 feet and a length of 341.57 feet. The chord of said arc bears South 53°46'39" West, 341.52 feet to a set 5/8" iron pin;
- 5.) Along an arc deflecting to the left, having a central angle of 00°56'08", a radius of 17,274.88 feet and a length of 282.07 feet. The chord of said arc bears South 51°33'36" West, 282.07 feet to a set 5/8" iron pin;



- 6.) South  $51^{\circ}05'32''$  West, 341.07 feet to an existing 1/2" iron pin in the existing corporation line of the City of Mason at a southeast corner of lands conveyed to the City of Mason, Ohio in Warren County Document Number 180409 (O.R. 1899, PG. 973), records of the Warren County, Ohio Recorder's Office;

Thence along said corporation line, with the east line of said City of Mason, Ohio lands and with the east line of aforesaid subdivision, North  $05^{\circ}45'56''$  East, passing an existing 1/2" iron pin lying 0.50 feet right at 976.58 feet, a total distance of 2,699.28 feet to an existing 7/8" iron pin at the southeast corner of lands conveyed to James C. & Meghann E. Murray in Warren County Document Number 885100 (O.R. 5642, PG. 879), records of the Warren County, Ohio Recorder's Office;

Thence with the east line of said James C. & Meghann E. Murray lands, North  $04^{\circ}14'23''$  East, passing an existing 5/8" iron pin at 292.57 feet, a total distance of 317.04 feet to the aforesaid centerline of Bunnell Road;

Thence along said centerline, South  $84^{\circ}14'09''$  East, 180.89 feet to the point of beginning.

Containing 106.5796 acres of land (102.2170 ac. from Parcel 12202000050 & 4.3626 ac. from Parcel 12202000060).

Subject to all legal highways, easements and restrictions of record.

The above description is the result of a survey prepared by McGill Smith Punshon, Inc. under the direction of Richard D. Nichols, P.S. No. 7929, dated June 12, 2014, the survey of which is recorded in

Volume 141, Page 8, Warren County Engineer's Record of Land Division.

Prepared by: McGill Smith Punshon, Inc.  
Date: July 3, 2014  
MSP No.: 13373.01

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Tract 4

Parcel No. 12-14-100-011

DWB

ALL THAT PARCEL of land situate in the State of Ohio, Warren County, Union Township, and in Sections 14 and 20, Township 4, Range 3 of the Land between the Miamis, designated as Parcel OHJ-100-34-1 on a plan of survey made by Robert W. Piper and Associates dated July 23, 1977, and more particularly described according to said plan, as follows:

Beginning at an iron pin in the west line of United States Route 42 at its intersection with the southwest right of way line of the Middletown to Cincinnati Branch of the railroad formerly of the Cincinnati, Lebanon & Northern Railway Company; thence with said west line of United States Route 42, south 36 degrees 38 minutes 50 seconds west, 173.17 feet to an iron pin in the northwest right of way line of the Dayton to Cincinnati Mainline of the railroad formerly of the Cincinnati, Lebanon & Northern Railway Company; thence with said northwest line of the Dayton to Cincinnati Mainline, south 62 degrees 17 minutes 57 seconds west, 922.09 feet to an iron pin in the southeast line of a connecting track of railroad formerly of said Railway Company; thence, with said Southeast line of the connecting track and with a curve to the left, said curve having a radius of 1200.35 feet and a chord bearing north 9 degrees 00 minutes 05 seconds east, 1280.15 feet, an arc distance of 1346.36 feet to an iron pin in said southwest right of way line of the Middletown to Cincinnati Branch; thence, with said southwest line of the Middletown to Cincinnati Branch, south 45 degrees 55 minutes 04 seconds east, 1001.58 feet to the place of beginning.

CONTAINING 9.1550 acres, more or less.

**EXHIBIT B**

**List of Permitted Exceptions**

## EXHIBIT B

1. Taxes and assessments for tax year 2014 and all subsequent years not yet due and payable. Portions of the Land are subject to CAUV recoupment upon a change in use of the Land.
2. Subject to rights of the public and others in and to that portion of the Land which lies within the boundaries of U.S. Route 42 (as to Tracts 1 and 2), and Bunnel Road (as to Tract 3).
3. Easement to The Cincinnati Gas & Electric Company as set forth in Deed Book 258, Page 343 as to Tracts 1 and 3.
4. Reservation of easements and rights by The Penn Central Corporation as set forth in Official Record 141, Page 94 as to Tract 4.
5. Reservation of easements and rights by The Penn Central Corporation as set forth in Official Record 141, Page 89 as to Tract 3.
6. Any and all railroad tracks, or railroad rights of way whether or not the tracks have been removed, located on, over, across or along the Property due to condemnation, license deed, possession or otherwise.

## EXHIBIT C

### Escrow Agreement

### Earnest Money Deposit

This Escrow Agreement is made effective the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between Properties of Terra Firma, Inc. (hereafter, "Seller") and the City of Mason, Ohio, 6000 Mason Montgomery Road, Mason, Ohio 45040, (hereafter, "Purchaser") and Center Title, LLC, whose address is 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202 ("Escrow Agent"), under the following circumstances:

A. Purchaser and Seller have, on June \_\_\_\_\_, 2014, entered into an Agreement of Purchase and Sale ("Agreement"), to purchase real and personal property described in the Agreement.

B. As part of this purchase, Purchaser is to deposit certain earnest monies with the Escrow Agent.

NOW, THEREFORE, the parties agree as follows:

1. Purchaser shall deposit with the Escrow Agent the sum of Three Hundred Thousand Dollars and 00/100 Dollars (\$300,000.00) as required by the Agreement (the "Earnest Money") to be held in a non-interest bearing account.

2. Escrow Agent shall subsequently disburse the Deposit in accordance with the provisions of the Agreement as follows:

2.1 Upon written notice from Seller and Purchaser of Closing under the Agreement, Escrow Agent shall disburse the Deposit, as defined in the Agreement of Purchase and Sale in accordance with such directive or upon Escrow Agent's receipt of an executed closing statement reflecting the application/disposition of said Deposit.

2.2 If there is a termination of the Agreement or a failure to close under the Agreement, either Seller or Purchaser shall give written notice to the other and to Escrow Agent, pursuant to Section 17 C of the Agreement. The Escrow Agent shall continue to hold the Deposit in the non-interest-bearing account until it receives a joint instruction from both Seller and Purchaser or instruction (by order) from a court of competent jurisdiction. If, for any reason, the party allegedly at fault does not so deny its fault within the five (5) day period, then Escrow Agent shall disburse the Deposit to the other party.

3. Escrow Agent shall follow any joint written instruction concerning the Deposit from Seller and Purchaser or any instruction from a court of competent

jurisdiction.

4. Deposit of Escrow Funds into a non-interest-bearing account:

(a) Within a reasonable time after receipt of the Deposit from Purchaser, and after this Escrow Agreement has been executed by all parties, the Escrow Agent shall deposit the escrow funds into its non-interest-bearing Trust account at Fifth Third Bank ("Depository").

(b) Escrow Agent shall not be responsible for and hereby disclaims any liability for:

(i) penalties or loss of principal or delays in the withdrawal of the funds which may be imposed by the Depository as a result of the making or redeeming of the investment pursuant to Escrow Agent's instructions;

(ii) loss or impairment of funds while those funds are in the course of collection or while on deposit in a financial institution if such a loss or impairment results from the failure, insolvency or suspension of a financial institution;

(iii) the financial status or insolvency of any other party, or any misrepresentation made by any other party;

(iv) the legal effect, insufficiency, or undesirability of any instrument deposited with or delivered by or to the Escrow Agent or exchanged by the parties hereunder, whether or not the Escrow Agent prepared such instrument;

(v) the default, error, action or omission of any other party to this Escrow Agreement;

(vi) the expiration of any time limit or other consequence of delay, unless a properly executed settlement instruction accepted by the Escrow Agent has instructed the Escrow Agent to comply with said time limit;

(vii) the Escrow Agent's compliance with any legal process, subpoena, writ, order, judgment or decree of any court, whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed;

(viii) any shortfall in the sufficiency of the amount held in escrow to accomplish the purpose of the escrow; or

(ix) any obligation to collect additional funds, unless such obligation is in writing and signed by the Escrow Agent.

(c) The funds deposited herewith are not to be invested unless all parties to this Escrow Agreement have agreed to this instruction in writing.

5. The Seller and Purchaser hereby certify that they are aware that the Federal Deposit Insurance Corporation's (FDIC) coverage applies only to a cumulative maximum amount of \$250,000.00 for each individual depositor for all of depositor's accounts at the same or related institution. Escrow Agent assumes no responsibility for nor will the undersigned parties hold Escrow Agent liable for, any loss occurring which arises from the fact that the amount of the above account may cause the aggregate amount of any individual depositor's accounts to exceed \$250,000.00 and that the excess amount is not insured. The undersigned parties further understand that certain banking instruments such as, but not limited to, repurchase agreements and letters of credit, are not covered at all by FDIC insurance.

6. All notices and communications herein required to be given or made to Seller, Purchaser or Escrow Agent shall be in writing and be addressed to Seller, Purchaser or Escrow Agent at their respective addresses as stated above or at such address as each shall notify the other in writing, and shall be deemed delivered three (3) days after being deposited in the mail if made by ordinary mail, or upon delivery if made by a nationally recognized overnight delivery service with confirmation receipt, by personal service delivery, or by electronic correspondence with delivery receipt.

7. The duties and obligations of Escrow Agent shall be determined solely by the express provisions of this Escrow Agreement, and Escrow Agent shall not be liable except for the performance of the duties and obligations specifically set forth herein. In furtherance and not in limitation of the foregoing: Escrow Agent shall not be responsible in any manner in connection with its acceptance of or performance of its duties and obligations under this Escrow Agreement; Escrow Agent shall not be liable for any error in judgment or for any act done or step taken or omitted by it in good faith or for any mistake in fact or law or for anything which it may do or refrain from doing in connection herewith; Escrow Agent shall not be liable for any loss in impairment of the Deposit, so long as not due to the negligence of Escrow Agent, in the non-interest-bearing account.

8. Notwithstanding the foregoing, the Escrow Agent shall not be liable except for willful misconduct in the performance of its duties and obligations as set forth herein. This Escrow Agreement is a contract between the parties hereto. Escrow Agent is not acting as a fiduciary for any party, and the parties expressly disclaim any fiduciary relationship among them. All claims, including without limitation, all claims for negligence against the Escrow Agent, its officers, agents and employees, must be brought, if at all, as breach of contract claims. Escrow Agent shall have no duty or obligation which is not specifically set forth herein. Escrow Agent's duties and obligations are strictly contractual. No third party beneficiary that is not a signer to this Escrow Agreement, shall have any right to enforce this Escrow Agreement.

9. Notwithstanding anything in this Escrow Agreement to the contrary, in the event of a dispute between Seller and Purchaser arising prior to or at the time of the

delivery or other disposition of the Deposit by Escrow Agent pursuant to the Agreement, which dispute shall be sufficient, in the sole discretion of Escrow Agent, to justify its doing so, Escrow Agent shall be entitled to tender the Deposit into the registry or custody of any court of competent jurisdiction, together with such legal pleadings as it may deem appropriate, and thereupon Escrow Agent shall be discharged from all further duties and liabilities under this Escrow Agreement and the Agreement. Any such legal action may be brought in such court as Escrow Agent shall determine to have jurisdiction thereof. Escrow Agent's determination of whether a dispute exists between Seller and Purchaser shall be binding and conclusive upon all parties hereto, notwithstanding any contention that no dispute exists. All costs and expenses incurred by Escrow Agent in taking any action pursuant to this section shall be covered by and paid pursuant to the indemnification of Escrow Agent contained in this Escrow Agreement.

10. No party may rely on any title search, title examination, title commitment and/or title policy issued in a transaction connected with this Escrow Agreement unless such party is named in such title product as the recipient, client, proposed insured, or actual insured. No party to this Escrow Agreement shall have any claim, including without limitation, any claim for negligence or for failure to disclose an encumbrance, against the Escrow Agent as to any title search, any issuance of a title commitment or any issuance of a title insurance policy. Any such claim of loss or damage, whether or not based on negligence, which arises out of the status of the title to the estate which is the subject of this Escrow Agreement, or any action asserting such claim, or which relates to a title search, a commitment or a policy, shall be restricted to the terms of the title commitment or title policy issued.

11. This is the complete Escrow Agreement between the parties. Each party has had the opportunity to read this Escrow Agreement, to understand it, to make changes to it, and, to consult with the experts of the party's choice, including legal experts. All prior representations, agreements and discussions are merged herein and are void unless contained herein. No party, person, employee or agent may modify this Escrow Agreement by any oral representation. All modifications of this agreement must be in writing signed by all parties. The signing of this agreement is the free and voluntary act and deed of each party.

12. If Escrow Agent shall notify Seller and Purchaser of its desire to be relieved of any further duties and liabilities hereunder, then Escrow Agent shall deliver the Deposit to a successor escrow agent designated by Seller and Purchaser. If Seller and Purchaser shall fail to agree upon and designate a successor escrow agent within two (2) days after having been requested by Escrow Agent to do so, then Escrow Agent shall in its discretion designate the successor escrow agent. The successor escrow agent designated by Seller and Purchaser or by Escrow Agent, as the case may be, shall be a bank or trust company having trust powers in good standing and located in Cincinnati, Ohio, and shall agree to be bound by all the terms and conditions of this Escrow Agreement and the Agreement. Immediately upon agreement by the successor escrow agent to be bound by all the terms and conditions of this Escrow Agreement and

the Agreement, the original Escrow Agent shall be relieved of any and all duties and liabilities under or in connection with this Escrow Agreement and the Agreement; provided, however, that no successor escrow agent shall assume any liability for the acts or omissions of Escrow Agent under this Escrow Agreement or the Agreement.

13. The Escrow Agent shall receive no initial fee for serving as Escrow Agent, If Escrow Agent determines that it requires the services of legal counsel to properly perform its duties, Seller and Purchaser agree to pay (one-half each) Escrow Agent its reasonable legal fees.

14. This Escrow Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

15. This Escrow Agreement shall terminate upon the disbursement by Escrow Agent of the Deposit. Any claim against Escrow Agent, if at all, related to this Escrow Agreement, must be made in writing and received by Escrow Agent within one year of termination of this Agreement or be forever barred.

The parties have hereto executed this Agreement as of the day and year first above written.

*{The remainder of this page was intentionally left blank}*

SELLER:

Properties of Terra Firma, Inc.

By: Craig S. Kolb

Title: Member

PURCHASER:

City of Mason, Ohio

By: Eric Hansen

Eric Hansen, City Manager

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

Jeffrey D. Forbes  
Jeffrey D. Forbes, Law Director

ESCROW AGENT:

Center Title, LLC

BY: \_\_\_\_\_

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

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

SELLER:

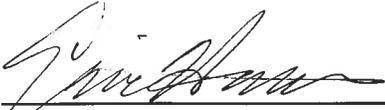
Properties of Terra Firma, Inc.

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

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

PURCHASER:

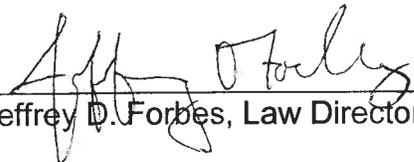
City of Mason, Ohio

By:  \_\_\_\_\_  
Eric Hansen, City Manager

\_\_\_\_\_

Date

APPROVED AS TO FORM:

 \_\_\_\_\_  
Jeffrey D. Forbes, Law Director

ESCROW AGENT:

Center Title, LLC

BY:  \_\_\_\_\_  
Name: Rocana S. Nicholas  
Title: member

## FIRST ADDENDUM TO AGREEMENT OF PURCHASE AND SALE

This First Addendum to Agreement of Purchase and Sale, is effective as of the date indicated below, and amends the terms of the Agreement of Purchase and Sale ("Agreement") by and between Properties of Terra Firma, Inc., an Ohio corporation, ("Seller"), and the City of Mason, Ohio, an Ohio municipal corporation, ("Purchaser") effective June 12, 2014.

WHEREAS, the Purchase Price for the Property, pursuant to Section 2 A. of the Agreement is \$17,500.00 per acre and in accordance with Section 4 of the Agreement, the acreage has been reduced to 162.6402 acres as set forth in the Plat of Survey of McGill Smith Punshon, Inc. dated June 12, 2014, and the final purchase price is determined to be \$3,006,416.00.00 based on a total of 171.7952 acres;

WHEREAS, Section 2 A. of the Agreement provides that Center Title, LLC is the Escrow Agent for the purchase and that Center Title, LLC is holding the Earnest Money Deposit, as defined;

WHEREAS, Section 7 A. of the Agreement sets forth the Closing Date to be no later than July 1, 2014 of Seller, but that date cannot be met by Seller;

WHEREAS, Section 14 of the Agreement permits Seller to assign the Agreement to any entity owned by the shareholders;

In consideration of the mutual promises contained herein, Purchaser and Seller hereby amend the terms of the Purchase and Sale Agreement as follows:

1. Section B of the Agreement is hereby amended as follows: The City desires to purchase and acquire portions of the Entire Property containing 171.7952 acres, as shown on Exhibit "A" attached hereto.
2. Section 2 A of the Agreement is hereby amended, in part, as follows: The aggregate purchase price (Purchase Price") to be paid by the City to Seller for the Property shall be Three Million Six Thousand Four Hundred Sixteen Dollars (\$3,006,416.00).
2. Section 2 A of the Agreement is further amended, in part, to substitute Firehouse Title Agency, Inc. in place of Center Title, LLC. Purchaser and Seller agree that Center Title, LLC shall withdraw as Escrow Agent and shall, on the date of Closing, by wire, transfer the Earnest Money Deposit in the amount of \$300,000.00 to, Firehouse Title Agency, Inc. All other terms of Section 2 A, not amended, shall remain in full force and effect.
3. Section 7 A is hereby, amended in part, as follows: The Closing ("Closing") of the sale of the Property by Seller to the City shall be on or before July 3, 2014 ("Closing Date"). All other terms of Section 7 A, not amended, shall remain in full force and effect.
4. Pursuant to Section 14, Seller hereby assigns its rights to sell the Property, to Terra Firma, DD, LLC, an Ohio limited liability company owned by the shareholders of Seller. All other terms of Section 14, not amended, shall remain in full force and effect.

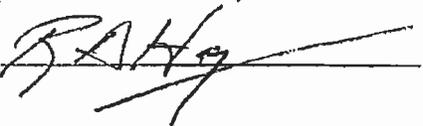
All other terms of the Agreement, not modified herein, shall remain the same.

ACCEPTED:

Date: July 1, 2014

SELLER:

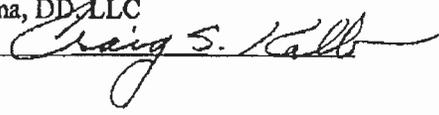
Properties of Terra Firma, Inc.

By: 

Date: July 1, 2014

SELLER'S ASSIGNEE:

Terra Firma, DD LLC

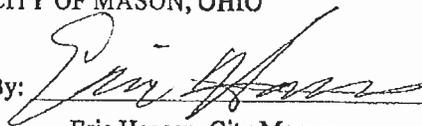
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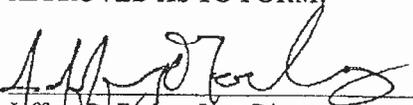
Date: July 1, 2014

**PURCHASER:**

CITY OF MASON, OHIO

By:   
Eric Hansen, City Manager

**APPROVED AS TO FORM:**

  
Jeffrey D. Forbes, Law Director

1691425.1

## SECOND ADDENDUM TO AGREEMENT OF PURCHASE AND SALE

This Second Addendum to Agreement of Purchase and Sale, is effective as of the date indicated below, and amends the terms of the Agreement of Purchase and Sale ("Agreement") by and between Properties of Terra Firma, Inc., an Ohio corporation, ("Seller"), and the City of Mason, Ohio, an Ohio municipal corporation, (collectively known as "Purchaser/the City") effective June 12, 2014 and also amends the First Addendum to Agreement of Purchase and Sale dated July 1, 2014 (First Addendum.)

WHEREAS, Section 5 of the Agreement provides, in relevant part, that Klasmulch may exercise a right of first refusal for the portion of the Property encumbered by the Klasmulch lease and that Seller shall notify Purchaser of the Klasmulch intent with respect to its right of first refusal;

WHEREAS, pursuant to Section 5 of the Agreement, Seller has notified Purchaser of Klasmulch's intent to exercise its right of first refusal;

WHEREAS, Section 7 A. of the Agreement was amended by the First Amendment to, among other provisions, extend the Closing Date to July 3, 2014, but that date cannot be met by Seller;

WHEREAS, Seller has requested an additional extension due to delays in Warren County's approval of the cut-up survey plat;

In consideration of the mutual promises contained herein, Purchaser and Seller hereby amend the terms of the Purchase and Sale Agreement and the terms of the First Addendum as follows:

1. Section 5 of the Agreement is hereby deleted and restated as follows: The City acknowledges that it has been notified that Klasmulch has exercised the right of first refusal for the portion of the Property encumbered by the Klasmulch Lease. If Klasmulch does not complete its exercise of the right of first refusal by acquiring the portion of the Property encumbered by the Klasmulch Lease, by July 15, 2014, then Seller shall purchase the Property encumbered by the Klasmulch Lease, on or before July 16, 2014. The City shall then purchase the Property encumbered by the Klasmulch Lease on or before July 17, 2014, for the same Purchase Price of \$17,500.00 per acre as set forth in Section 2 A of the Agreement. If Klasmulch completes the exercise of the right of first refusal, then the Property purchased by the Tenant shall be excluded for all purposes with a proration of the Purchase Price based on acreage, and the City shall purchase and acquire the remainder of the Property and the Klasmulch Lease shall be terminated upon completion of the Klasmulch acquisition of the Property encumbered by the Klasmulch Lease. The termination of the Klasmulch lease shall be presented for approval on or before the Closing between the City and Seller. These obligations shall survive the Closing. The Farm Lease will be assigned to and assumed by the City at Closing; provided, however, the City may terminate the Farm Lease in whole or in part so long as the City pays the tenant thereunder an amount equal to Five Hundred Sixty-Nine Dollars (\$569.00) per acre of any crops destroyed by the City prior to the harvest of the same. In addition, all amounts due from the tenant under the Farm Lease with respect to the 2014 crop season shall be paid to Seller, which obligation shall survive the Closing.

2. Section 7 A is hereby, amended in part, as follows: The Closing ("Closing") of the sale of the Property by Seller to the City shall be on or before July 9, 2014 ("Closing Date"). All other terms of Section 7 A, not amended, shall remain in full force and effect.

All other terms of the Agreement and First Addendum, not modified herein, shall remain the same.

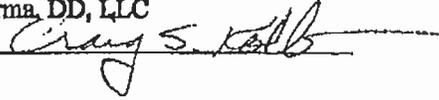
ACCEPTED:

Date: July 3, 2014

SELLER/SELLER'S ASSIGNEE:

Terra Firma, DD, LLC

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

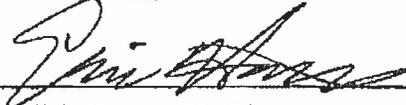
A handwritten signature in black ink, appearing to read "Craig S. Kalb", is written over a horizontal line. The signature is cursive and includes a small loop at the end.

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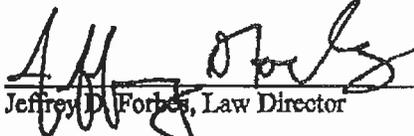
Date: July 3, 2014

**PURCHASER:**

**CITY OF MASON, OHIO**

By:   
Eric Hansen, City Manager

**APPROVED AS TO FORM:**

  
Jeffrey D. Forbes, Law Director

1695871.1