March 29, 2016

THE "BAD & UGLY" ART OF PURCHASING A CONTAMINATED PROPERTY - PART 1

By

Jasbinder Singh

PART I OF THE 2-PART SERIES – The "As is, Where is" Provision in the Contract

The Town of Herndon purchased the Ashwell property (the Property) last year, because it had considered it vital to the development of the downtown. The purchase is a prime example of how not to make decisions. It also illustrates a pattern of behavior (on the part of town officials and the majority of the council) that disrespects our town charter and harms our welfare. It erodes checks and balances inherent in the Town charter and prevents examinations of potential waste and fraud. In this case alone, the mayor's "rush to development" would cost the town at least $800,000 right off the bat.

The series shows that time and time again, the Town Manager and the Mayor:

- downplayed the extent of the contamination and the cost of remediation
- did not provide the relevant documents (to the Council) on a timely basis
- preferred to give verbal summaries and conclusions to the Council rather than permitting councilmembers to make their own decisions.

Often, sadly, the majority of the councilmembers were just happy to accept whatever information the Town Manager and the Mayor had provided to them and accept whatever conclusions the TM and Mayor had reached. The information was often given either at the last minute (therefore, decisions had to be made under the threat of unreasonable deadlines) or after the decisions had already been made. The small minority, though, had to fight to receive them in advance.

This pattern of behavior has been and is being repeated often. For example, even though the Town received financial information pertaining to two downtown development proposals on February 19th, the councilmembers are likely to see the Town Manager's analysis on April 5th, when they will be asked to make decisions about moving forward. The TM has already declined a private as well as a public request to provide the documents in advance.

This article demonstrates how such actions significantly reduced the Council's ability to digest the information quickly, ask questions, debate policy, economic and administrative issues, and develop options.

ONE IS TEMPTED TO ASK, "WHY DO WE EVEN HAVE THE TOWN COUNCIL?"

The presentation of the issues, this case illustrates, begins with the discussion of the "non disclosure" of the left-over contamination from the 1990s.

A. NOT DISCLOSING THE "RESIDUAL" SITE CONTAMINATION

While removing underground petroleum storage tanks from Ashwell's property in 1990, workers discovered extensive contamination of soil and groundwater. A specific area in front of the former auto-repair shop was never remediated, even though it had been recommended for corrective action in 1990 and 1992; that is, the contamination was left in place. In addition, the soils underneath the repair shop were never investigated.

The following excerpts from two orders of the then Virginia State Water Pollution Control Board (VWCB) document that the area of concern had not been remediated.

- In an October 23, 1991 letter, VWCB had ordered that "*a CAP for the Ashwell property outside the excavation limits is not included within this assessment … Upon completion of the proposed public improvement and following equilibrium of groundwater parameter,* ***a formal CAP for this portion of the Ashwell property shall be prepared.****"*

- However, the Board changed its mind after the completion of the installation of the culvert. In an April 2, 1993 letter, it opined that, ***"… DEQ cannot accept your request for soil excavation activities in the area of B-l, B-2, and B-4*** (located outside the box culvert excavation)" (Emphasis Added)

Under the direction and orders of the VWCB, the investigations had started in 1988 and continued until at least 1994. After the corrective actions had been completed, the site had been monitored (for free-phase petroleum, but not for dissolved groundwater contamination or soil contamination) until 2004. Click to read a brief History of the Environmental Contamination and VWCB's Orders. Take a look at the Chronology of Past Investigations of the Ashwell Property.

Town officials knew about these facts, because the Town was a partner with Ashwell in the cleanup of the property in 1994[1]; yet, not a word about the residual contamination was mentioned to the:

- appraisers who valued the Property in 2013 and 2015,
- Town Council at several stages of the purchase, and
- public before, during or after the public sessions.

Let us forget the left-over contamination from the 1990s for the moment, the Town Manager and the Mayor, as the following section shows, were highly resistant to providing the appraisals to the councilmembers in advance of their meetings.

B. NOT PROVIDING THE APPRAISALS TO COUNCILMEMBERS AND THEN LIMITING THEIR DISCUSSION

The Council's first chance to learn something about the Ashwell site came when the Town Manager tried to present his ideas about how the negotiating range should be developed. While the Town Manager and the Mayor had the benefit of having examined the appraisals, the Councilmembers knew nothing at all about the site or the appraisals. They had not been provided copies of the appraisals in advance. During the close door meeting, the Town Manager and the Mayor were strongly resistant to the idea of providing copies of the appraisals to the councilmembers. Councilmember Singh led the fight to obtain the appraisals. He was successful in his efforts in obtaining the reports, but

HIS FIGHT CAME TO NAUGHT WHEN AT THE NEXT CLOSE DOOR MEETING, THE MAYOR DID NOT ALLOW HIM TO PRESENT HIS VIEWS

– views that might have swayed others to lower the low and high ends of their selected ranges. The majority did what it wanted to do all along – set a high enough range to come close to Mr. Ashwell's asking price. Click here to read the blogpost.

(https://herndonopinion.com/2015/06/07/the-untold-story-of-the-towns-purchase-of-the-ashwell-property-how-the-council-saved-millions-of-dollars/)

Had the Town provided the 1990s reports to the appraisers, the appraisals would have been lower by at least $800,000 if not $1 million (This estimate is based on actual bids received by ECC in 1992). And, if it had provided the reports to the councilmembers, they could have questioned the validity of the appraisals.

The Property was also the subject of an environmental investigation in 2007 by JPI Development Services. The appraisers could have used the estimates of the costs of remediation given in the Phase II report (of this investigation) to calculate the reduction in appraised values, but were not given a copy of this report. It appears the Town did not even tried to obtain it before 2013.

C. NOT MAKING THE "AS IS, WHERE IS" PROVISION A SEPARATE (AND VISIBLE) CLAUSE OF THE CONTRACT

Mr. Ashwell agreed to a much lower figure of $3.519 million than his asking price. In hindsight, there are two potential explanations for this acceptance by Mr. Ashwell. The **First explanation** is that Mr. Ashwell still had a thing or two up his sleeve. Rather than caving in, he had planned to insert the following provision (The Provision) in the contract:

*"The Town shall buy the Property from Seller in its **"as is, where is"** condition as to the improvements on the Real Property **with all fault** and **without any warranty**, express or implied as to the condition of the Property …" (Called "As is, Where is" provision or The Provision in the rest of the article)*

While, the Town may have ignored the residual contamination, Mr. Ashwell did not. He was very familiar with the past investigations and knew that it would cost a considerable sum to remediate the site. The contract, with this provision, was worth about $4.5 million (and thereby a lot closer to his asking price). Under this scenario, it would appear that he had beaten the Town to the punch.

The **second explanation** for the acceptance of the low figure is that both parties had verbally agreed that the Town would buy the property “as is”. However, due to the sensitivity about paying too much, the Mayor, the TM and the Town Attorney decided to not tell the Council about it. No one will never really know what happened then (unless one examines the Town Attorney’s notes of the meetings), but

WE DO KNOW THAT THE THREE OF THEM NEVER MENTIONED THE "AS IS, WHERE IS" CONDITION AT ANY TIME,

even though they had many opportunities to do so as discussed in the Section D of this part and Part 2 of this series.

Further, to avoid or minimize any controversy that might arise, Ashwell either agreed to insert or inserted on his own, the “As is, Where is” provision not as a separate clause, but as a bland sentence in the introductory part of the contract. Those interested in scanning the primary clauses (most of us) would certainly miss it. Miss it, they all did. No member of the public or the council raised any questions at the subsequent Work and Public sessions. Take a look at the Ashwell_Property_Contract (the Contract).

4. NOT DISCLOSING THE “AS IS, WHERE IS” PROVISION DURING PUBLIC PRESENTATIONS

Former Town Attorney, Richard Kaufman was the first person to discuss the contract. While he meticulously discussed every clause in the contract during the Work Session on May 19th, and the Public Session a week later, he did not mention a word about the “as is, where is” warning.

Duties of the Town Attorney: Under the Town Charter, the Town Attorney is the “legal advisor of (1) the council, (2) the town manager, (3) all departments … in all matters effecting the interest of the town…” Therefore, **the council, not the mayor, is his legal “client”**. In this case, as in all other cases, he was supposed to proactively and meticulously inform the Council about any matter that might affect the town. He is supposed to prepare his presentations (to the council) by assuming that councilmembers might not read a contract fully. Obviously, he failed to do his duty, in this regard.

Mr. Kaufman was a very careful attorney, but he often mentioned that the Mayor was his boss. I believe he was wrong. Consider the following:

Duties of the Mayor: Contrary to commonly held beliefs, but in accordance with the town charter, the mayor “…shall preside over the meetings of the town council and **shall have the same right to speak and vote therein as members of the town council**. He (she) shall be recognized as the head of the town government for all **ceremonial and military purposes**…” (Emphasis added)

Even though a mayor is expected to provide leadership in policy, (According to VML’s Handbook for Virginia Mayors & Council Members),nothing in the charter gives the mayor power to circumvent the primary policy making body - the council.

Nothing in the charter gives the power to make unilateral decisions, certainly not the consequential ones. Consequently,

THE TOWN ATTORNEY SHOULD HAVE TOLD THE MAYOR THAT HE HAS A DUTY TO PRESENT THE "AS IS, WHERE IS" PROVISION TO THE COUNCIL.

After-all the council, not the mayor, was his legal client.[2]

The record shows that the town attorney, the town manager, the mayor and the outside counsel discussed the “As is, Where is” provision extensively before agreeing to the contract. The outside counsel advised the Town to ask for an inspection period of 90 days and reserve the option to walk away from the contract at a later date. No one will know why he did not advise them to withhold signing the contract until all appropriate environmental investigations had been completed. Perhaps, he knew that the Mayor wanted to move ahead without delay.

Why the Mayor and the Town Manager could not wait a few months to do the investigations first, develop the facts, inform the council, and obtain its advice and consent is beyond comprehension. It was not as if another deal was waiting in the wings for Mr. Ashwell. The best offer he had reportedly received was only $2 million. Perhaps the real reason for moving forward was to “start” the development of the downtown before the election in 2016.

With great fanfare and publicity, the Mayor signed the $3.519 million contract on or about June 9th, 2015. There are good reasons to believe that the councilmembers and the public had no idea that it was an “as is, where is” contract. And, the Mayor, and the Town Manager were not about to tell them either, even after the discovery of the contamination. Their unwritten “job” was to ensure the council would approve the contract. How they did it, is the story of the 2nd Part of the 2-Part series.

The Town buys Ashwell's contaminated property: June 2015

FOOT NOTES

[1] The VWCB had repeatedly ordered additional subsurface investigations of the Property. However, before the remedial actions could be approved, the Town expressed its desire to install a storm-water culvert through the Property. When the Town (and the County) became a partner in the cleanup, only the areas affected by the excavation for the culvert were cleaned–up. The adjacent contaminated areas were left undisturbed.

[2] Perhaps, the Town Manager provided the lead to the Town Attorney in this matter. The TM's remarks in the August 26th meeting suggest that he did not believe that the site contamination was of material importance. He may have advised the Town attorney to not be concerned about the contamination.

According to the Charter "…it shall be the duty of the town manager to (a) attend all meetings of the town council, with the responsibility **to counsel and advise but with no voting rights**; (b) keep the town council (**and, not a part of it**) advised of the financial condition and the future needs of the town and of all matters pertaining to its proper administration… and make recommendations…" **(Emphasis added)**. Accordingly, the TM's primary responsibility is to keep the council informed fully at all times. If the TM had advised the Town Attorney to withhold any information from the council, the latter should have declined the advice.

HISTORY OF THE VIRGINIA WATER CONTROL BOARD'S (VWCB) ORDERS AT THE ASHWELL SITE

by
Jasbinder Singh

The Ashwell property consists of four lots 27A, 26, 28, and 29. A car dealer along with a car repair shop has operated in one of the building for more than 50 years. A gasoline service station and a machine shop had operated until about 1989. These operations were supported by at least four storage tanks until about 1990.

The Town of Herndon was fully aware of the contamination caused by the facilities and USTs at this location throughout the 1990s. By 1992 it had become a partner in the clean-up of the site as discussed below.

A. Removal of the Underground Storage Tanks

Pursuant to an order by VWCB to remove the tanks and conduct a very limited surface investigation, the tanks were removed on March 26, 1990.

Approximately 160 tons of petroleum contaminated soil, excavated as part of the tank excavation project, was removed from the site and disposed of by Soil Safe Inc. *Based on the high levels of concentrations in the pits, VWCB ordered* ***limited subsurface investigation*** *to assess the extent of subsurface contamination surrounding the former Tanks 1, 2 and 4.*

B. Subsequent Investigations

The subsurface investigation, supplemented by two additional VWCB orders[1], discovered the following contamination levels on the middle part of the property.

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[1] On September 11, 1990, contractors excavating a **sewer line** for the Town of Herndon, in an area located in the central portion of the property, encountered soil possessing a petroleum odor. The excavation was temporarily backfilled with clean material pending resolution of the onsite contamination issues. *The VWCB instructed Ashwell to conduct a complete site characterization study and develop a Corrective Action Plan.*

Fifteen days later, On September 26, 1990, during excavation of a **water line** located on the north side of Elden street, soil possessing a strong petroleum hydrocarbon odor was encountered approximately 5' below grade. In addition to the contaminated soil, water possessing a petroleum odor and containing an obvious black oily material was observed flowing into the trench from beneath the water line. *VWCB instructed Ashwell to initiate product recovery from the utility line area. The contractor installed six monitoring wells and four soil borings pursuant to the states orders.*

Soil Contamination: B1, B2, B3 detected TPH as diesel were reported between 60 and 620 ppm. Levels above 100 ppm were actionable.

Groundwater Contamination: Concentrations of Total **BTEX** for MW-4, MW-5, and MW-6 were 3,085 ppb, 156 ppb and 192 ppb respectively. Action Level for BTEX in groundwater was 100 ppb.

Hence, some corrective action was needed, but, again and again, the VWCB changed its mind as discuss below.

C. Town of Herndon's Storm Water Culvert Project

On **October 23, 1991**, VWCB changed the scope of its orders to discuss petroleum hydrocarbon contamination in the context of TOH project that would include construction of dual storm sewer culvert… through the southern portion of the Ashwell property. (click here to see the project diagram) The VWCB instructed that:

- A CAP for the Ashwell property outside the excavation limits is not included within this assessment, and
- A formal CAP for this portion of the Ashwell property **shall** be prepared upon completion of the proposed public improvement. **(Emphasis Added)**

This means VWCB was planning to prepare a Corrective Action Plan after the construction of the culvert had been completed.[2] However, it wasn't.

D. Final Order to Exclude the Remediation of the Ashwell Property (outside the excavation area for the culvert

In violation of the VWCB's order of October 23, 1991, the contractor suggested that the central portion of the Ashwell property should be remediated. However, VWCB had yet again changed its mind and disagreed as follows:

> *"… DEQ cannot accept your request for soil excavation activities in the area of B-l, B-2, and B-4 (located outside the box culvert excavation). Based on current information, the DEQ does not consider this soil excavation to be an appropriate corrective action for the effective cleanup of the site. If soil remediation is needed for this area, it can be pursued under a (separate) Corrective Action Plan (CAP) Permit." (**word "separate" added**)*

Thus, the Town of Herndon, was aware that the Ashwell property had not been fully remediated. The VWCB did not explain the reasons for its decision. It had chosen to

[2] Pre-excavation study suggested that about 2,000 cy of contaminated soil would have to be removed from the site. This estimate was later increased to about 2,700 cy. In addition, about 9,500 gallons of contaminated groundwater was also removed and treated before disposal. The unexpected high levels of contamination encountered during the excavation led to unexpected increase in the excavation costs.

ignore the fact a few years earlier, unexpectedly high levels of hazardous chemicals had been discovered at this location, the excavation work had to be stopped to protect the workers and excavation had been backfilled with clean soil. Similarly, high levels of soil contaminants had been encountered unexpectedly at other locations as well. Therefore, it was highly probable that the Ashwell property would also contain high concentration of contaminants and that any remediation would result in the excavation of larger than expected volumes of contaminated soils. [3] The Town was aware of all of these facts back in 1994.

[3] Why the Town Manager did not provide any documents from the past investigations to the appraisers is not clear. Perhaps, it believed that the past contamination was not of much consequence and that it wanted to move forward regardless of the level of contamination. There is no record that suggests that the Town Manager or the Mayor asked the council for its input. Consequently, eight councilmembers from two different councils (2012-2014 and 2014-2016 councils) were not aware of the past contamination of the site.

CHRONOLOGY OF VARIOUS INVESTIGATIONS OF THE ASHWELL PROPERTY

By
Jasbinder Singh

1. PRELIMINARY HAZARDOUS SUBSTANCE CONTAMINATION ASSESSMENT, SPRING STREET PAVILION BY ECC NOV. 23, 1988.

The report indicated that no free petroleum product was measured in any of the wells. However, none of the wells were constructed on the Lot 26.

Building located in the southeast corner of Lot 26 is a former gas station. Information given to ECC indicated that two of the three USTs were still on the property (this was old information).

Approximately 100' north of the gas station, Horn Motors operates a small repair shop. An additional tank exists about 20' east of the repair shop. It appears that 2000 gallon steel UST was reported to be associated with Ashwell automobile dealership. It had leaked for a long time before its use reported ended in 1981.

A 250 gallon above ground fuel storage tank located adjacent to the building on Lot 26 exhibited staining that could be observed for about 30 ft in the easterly direction. (see page 111 for location of monitoring wells and soil borings)

Lead Concentration	= 15 ppm – 10.5 ppm
TPH	= 108 ppm – 600 ppm
BTEX	= 7 ppm – 158 ppm
Benzene (Soil MW6)	= 7 ppm
Toluene	= 156 ppm
Xylene	= 16 ppm
Ethylbeneze	= 133 ppm

Primary Recommendation

The following remediation recommendations involve excavation, removal, and following remediation, probably reuse of the suspected contaminated soils. ***The regulation required that UST must be removed.*** *ECC further recommends ambient air monitoring for the protection of on-site workers from the release of air-borne contaminants during removal activities. Soils surrounding the tank area may be treated by the aeration method.*

2. REMOVAL OF UNDERGROUND STORAGE TANKS AND LIMITED SUBSURFACE INVESTIGATION – Prepared For Ronald Ashwell, July 20, 1990

The tanks were removed on March 26, 1990. "As a result of encountering an indeterminate amount of soil contamination, a limited subsurface investigation and site assessment, consisting of four soil borings and one groundwater monitoring well in the former tank pit area was requested by VWCB. The contaminated soil was encountered during the removal of the three USTs immediately adjacent to Elden Street." The fourth tank was located adjacent to the existing service bays, approximately 300 feet north of Elden Street."

"Approximately 160 tons of petroleum contaminated soil, excavated as part of the tank excavation project, was removed from the site and disposed of by Soil Safe Inc. Lab tests showed that TPHs in concentrations ranging from 570 ppm to 2200 ppm were found in the excavations for Tanks 1, 2 and 4. Soil samples recovered from Tank 3 showed THP concentrations of 38 and 71 ppm.

Recommendation & Subsequent Actions.

Based on the high levels of concentrations in the pits, VWCB ordered ***limited subsurface investigation*** *to assess the extent of subsurface contamination surrounding the former Tanks 1, 2 and 4.*

Based on its limited subsurface investigation, ECC recommended a "No-Action" Alternative. It suggested that the no-action alternative appears to the appropriate remedial alternative for the Ashwell Subaru site.

However, *on September 11, 1990*, contractors working for the Town of Herndon during the excavation of a sanitary sewer line encountered soil possessing a petroleum odor. **The excavation was located in the central portion of the property**, approximately equidistant between the previously discussed underground storage tank areas.

Order By VWCB

Because of the obvious petroleum odors emanating from the trench, a stop work order was issued. As a result of the presence of subsurface petroleum contamination encountered during construction, the VWCB rejected the no action alternative and **instructed Ashwell to conduct a complete site characterization study and develop a CAP based on the study results.** The excavation was temporarily backfilled with clean material pending resolution of the onsite contamination issues. As shown later, this area was never remediated again.

3. CORRECTIVE ACTION PLAN, DECEMBER 29, 1990

On September 26, 1990, during excavation of a **water line** located on the north side of Elden street, soil possessing a strong petroleum hydrocarbon odor was encountered

approximately 5' below grade. In addition to the contaminated soil, water possessing a petroleum odor and containing an obvious black oily material was observed flowing into the trench from beneath the water line.

Another Order by VWCB

VWCB instructed Ashwell to initiate product recovery from the utility line area.
The subsurface investigation conducted by the ECC at the Ashwell site consisted of the installation and sampling of six groundwater monitoring wells and four soil borings. In addition, the scope of this investigation including sampling and analysis of three existing wells located on the site. The installed monitoring wells and soil borings were located to characterize the southern portion of the property, adjacent to Elden Street, Spring Branch and the former UST locations.

Soil Contamination:

B1, B2, B3 detected TPH as gasoline at concentrations of 66, 35 and 10 ppm, but TPH as diesel were reported between 60 and 620 ppm. In soils around MW- 10, and 11, TPH concentrations were 120 ppm and 3 ppm respectively.

Groundwater Contamination

Approximately 0.2 ft of free floating product was observed in MW-8 located one foot north of the property boundary. TPH were not detected in MW- 4, 5, 6, 10 and 11. Concentrations of **MTBE** in MW-10 and MW-11 were 130 ppb and 1 ppb respectively. Concentrations of **Total BTEX** for MW 10 and MW 11 were 19 ppb and not detect respectively. Concentrations of Total **BTEX** for MW-4, MW-5, and MW-6 were 3,085 ppb, 156 ppb and 192 ppb respectively. Va Action Level for BTEX in groundwater was 100 ppb. Hence, some action was needed.

Area 2 is in the vicinity of MW-6. *The third identified area is in the vicinity of MW-4, located approximately 10 ft east of the former UST in the north central portion of the site.*

Corrective Action

a. Excavation and disposal of **all** soil containing TPH levels equal to or greater than 100 ppm. Soils with concentrations less than 100 ppm shall be placed in non-public environments. Soil with concentrations equal to or greater than 100 ppm shall be disposed of via incineration. Monitor ambient air during excavation.

b. Pump, Treat and dispose of the Groundwater

c. Monitor contamination in specific wells.

4. ADDITIONAL INVESTIGATIONS –PRELIMINARY CAP FEBRUARY 10, 1992

Another Order by VWCB

On October 23, 1991, VWCB changed the scope of services to assess the extent of documented PH South of MW 8, aquifer characteristics and a discussion of petroleum hydrocarbon contaminants with regard to a TOH public improvement project. The project includes construction of dual storm sewer culverts with channelize Spring Branch, the natural drainage-way, through the nearby area and the southern portion of the Ashwell property. The continuation is part of an overall project involving the installation of an approximately 1700 foot twin box culvert through the CBD with is designed to collect natural and stormwater runoff from an 300 acre area.

Due to the extent of excavation and nature of the infrastructure project, and the unknown impact of these improvements on groundwater flow, direction, and velocity within the Ashwell property, *a CAP for the Ashwell property outside the excavation limits is not included within this assessment.*

"Upon completion of the proposed public improvement and following equilibrium of groundwater parameter, *a formal CAP for this portion of the Ashwell property shall be prepared.*

Letter from ECC to Mr. Ashwell – July 1992

"Based upon our previous investigations and site plans provided by the Town of Herndon, it is estimated that 3,060 cubic yards of soil must be removed from the Ashwell Property and the proposed Town of Herndon stormwater improvement project easement. Of the approximate 3,060 cubic yards of material, **it is estimated that 2,000 yards of material shall be contaminated with petroleum products in excess-of State action limits for TPH or BTEX.** Following disposal characterization, this material shall be disposed of via incineration at a State approved facility. **The remaining approximate l,000 yards of material shall be disposed of within a debris dump as uncontaminated solid waste.** It should be noted that actual quantities of contaminated soil shall be determined based upon field observation, field screening, and laboratory analyses.

Cost of CAP (Pages 340-342)

Excavation all soil, and Loading, Transport and Disposal of 1000 cy	=$ 62,530
Disposal of 2000 cu yd of contaminated soil with > 100 ppm	=$156,000
Groundwater treatment and disposal	=$ 79,000
Engineering Oversight	=$ 45,375
Total	=$341,405

Or, about **$90/ton** of soil contaminated with contaminants above 100 ppm.

5. CORRECTIVE ACTION PLAN – DATED DEC, 1992

(Excerpt From The Previous Investigations) - Town of Herndon initiated excavation activities for storm sewer system at the southeast corner of the site in 1990. Upon excavation of the storm sewer trench, a strong petroleum odor and water exhibiting a petroleum sheen were observed. Trenching work was halted by order of the County Fire and Rescue department due to potentially explosive conditions in the storm sewer excavation. The excavation was backfilled and storm sewer work ceased on the site property. The storm system has since been completed, with the exception of the on-site section.

Soil Contaminants

17 samples – TPH concentrations varied between 10 and 2500 ppm at 8 locations and above 100 ppm at 4 locations that correspond to former UST areas. Concentration at levels above 100 ppm requires corrective action by VWCB.

Groundwater Contaminants

BTEX compounds were detected at 156, 192, and 3085 ppb from monitoring wells 5, 6 and 4 respectively. Monitoring well 8 was not sampled because it was found to have "floating" hydrocarbon products. *The risk to human health is significant when the subsurface environment is exposed during excavation activities from the Spring Branch storm sewer installation.*

Corrective Action

The Spring Branch storm sewer system on the site consists of twin 8 x 5 feet concrete culverts installed to depths of 10 feet. The excavation for these culverts is approximately 160 feet in length on-site, and will be at least 25 feet in width at the surface to allow for engineering cut-backs as mandated-by Virginia Occupational Safety and Health Standards for the Construction Industry (29 CFR Part 1926.651).

An estimate of soil removal from the excavation is 2,000 tons. Toe excavation of subsurface soils for the Spring Branch storm sewer system is based upon Town of Herndon infrastructure needs and not environmental risk. The excavation activity, however, provides an opportunity to remove residual petroleum contaminated soils from the site, lessening the potential for further contaminant migration and groundwater degradation. Representatives of Paul Brothers of Virginia, LC. and the Town of Herndon have agreed upon a cooperative approach to performing the excavation activities.

In addition to the sewer utility corridor, subsurface soils will be excavated in the vicinity of borings B-1 and B-2 at the southeastern corner of the site, where TPH concentrations of 760 ppm and 2500 ppm have been observed.

An estimated 100 tons of soil will be removed from this operable area.

There are environmental and health risks associated with the excavation activities. To avoid dewatering discharge of contaminated water accumulated in the trench, a petroleum recovery vacuum truck will remove all accumulated trench water for disposal at an approved facility.

6. **ADDITIONAL CLARIFICATIONS AND REVISIONS REQUIRED BY VWCB ON OR ABOUT APRIL 1993 AND THE RESPONSE (PAGE 378)**

   Among other things, it states:

   "… DEQ cannot accept your request for soil excavation activities in the area of B-I, B-2, and B-4 (located outside the box culvert excavation). Based on current information, the DEQ does not consider this soil excavation to be an appropriate corrective action for the effective cleanup of the site. If soil remediation is needed for this area, it can be pursued under a Corrective Action Plan (CAP) Permit."

   The new estimate of the amount of soil that must be removed is 2,670 cy

7. **PHASE I- PRELIMINARY ENVIRONMENTAL ASSESSMENT – MAY 27, 1994 –** Conducted for George Mason Bank (why the bank?) Summarized all previous studies.

   VA Pollution Complaint 90-1343 – Entitled "Ashwell Oldsmobile indicated three 2,000 gallon gasoline tanks and one 550 gallon heating oil tank were removed from the dealership on March 26, 1990.

   "As a result of the contamination, the following reports were prepared:

   - UST removal and Site Characterization Reports
   - Removal of USTs and Limited Subsurface Investigation (Completed July 20, 1990)
   - Site Characterization and Corrective Action Plan (Completed Dec. 29, 1990)
   - Additional Site Characterization and Interim Corrective Action Plan (Completed February 1992)

   Additional information regarding the Interim Corrective Action Plan was requested by the VDEQ. Free product recovery has been performed since March 1991, but has been recently discontinued since no free product was observed. The case is listed as open.

"The information reviewed indicated that the contamination from the USTs did not migrate to the subject property and was concentrated near the sources of the contamination."

"As indicated on Figure 1, which is located in Appendix A, a culvert carries water beneath the subject property (Lot 20A) in a northerly direction to an outfall approximately 140 feet north of the property's north property line. At various locations along the culvert, grated inlets located immediately above the culvert intercept the surface flow"

8. **PHASE I – ENVIRONMENTAL SITE ASSESSMENT – PAUL BROTHERS PROPERTY – LOTS 20F AND 20C (AS THEY ARE NOW DESIGNATED) – FEBRUARY 10, 1995** - Conducted for the Town of Herndon – This study is an update of the study conducted on May 27, 1994 (see below)

   Summarizes All of the Previous Studies –

   "Although there was no evidence noted of a release from the above ground tanks located on the adjacent parcel, if a spill or release should occur, it is likely that the product would flow overland to the subject property."

REAL ESTATE CONTRACT TO BUY AND SELL PROPERTY

BETWEEN

ASHWELL, L.L.C.,

AS SELLER

AND

TOWN OF HERNDON,

A VIRGINIA MUNICIPAL CORPORATION

AS PURCHASER

This REAL ESTATE CONTRACT TO BUY AND SELL PROPERTY (this "Contract") dated as of May 11, 2015 (the **Effective Date**), is between ASHWELL, L.L.C. (**Seller**), a Virginia limited liability company and TOWN OF HERNDON, a Virginia Municipal Corporation (**Town**).

BACKGROUND

A. Seller is the owner of approximately 72,968 square feet of real property (the **Real Property**) located at 770 and 782 Elden Street and 724 Center Street, in the Town of Herndon, Fairfax County, Virginia (identified as Fairfax County Tax Map 0162-02, Parcels 26, 27A and 29), more particularly described on **Exhibit A** attached to and made a part of this Contract; provided, however that the legal description for the Real Property set out on the Survey (defined below) shall be substituted for **Exhibit A** as the description of the Real Property for all purposes hereof.

B. Seller desires to sell and the Town desires to purchase the Real Property and all related rights, entitlements, and appurtenances, including, without limitation, Seller's interest in adjacent streets, alleys, rights-of-way, strips, gores, and access easements, any and all utility lines and capacity, and any improvements located on the Real Property (the Real Property and related rights, appurtenances, and improvements are collectively referred to as the **Property**).

CONTRACT

Subject to the terms hereof, Seller shall sell by deed with Special Warranty of title all of the fee simple title to the Real Property and the Property to Town. Town shall buy the Property from Seller in its "as is, where is" condition as to the improvements on the Real Property with all

fault and without any warranty, express or implied as to the condition of the Property, unless otherwise specifically set forth in this Contract as of the Closing (hereinafter defined) upon the following terms:

1. Earnest Money Deposit.

a. Within 3 business days after Town receives and accepts 3 copies of this Contract executed by Seller and Town, Town shall deposit the sum of $50,000.00 (Earnest Money) with Stewart Title and Escrow, Inc. (Escrow Agent and Title Company), 10505 Judicial Drive, Suite 300, Fairfax, Virginia 22030, Attention: Mr. Mark Fitzgerald, Phone: (703) 352-2900, Fax: (703) 273-8316.

b. Escrow Agent and Title Company shall, promptly upon receipt, place the Earnest Money in an interest bearing bank account designated from time to time by Town. The term "Earnest Money" shall include all interest accrued on the Earnest Money deposited with the Escrow Agent.

c. Escrow Agent shall disburse the Earnest Money as provided in this Contract. At Closing, the Earnest Money shall be released to Seller and applied to the Purchase Price.

d. Except as otherwise specifically provided in this Contract, the Earnest Money shall become nonrefundable to Town. The Earnest Money shall be refundable to Town in the event of a default beyond any applicable cure period by Seller under this Contract or a termination of this Contract by Town pursuant to Paragraphs 3 and 4 hereof or as otherwise expressly provided in this Contract.

e. If either party becomes entitled to receive the Earnest Money pursuant to the terms of this Contract, then upon request by Escrow Agent and Title Company , Town and Seller shall each deliver a letter of instruction to Escrow Agent directing Escrow Agent and Title Company to pay the Earnest Money to the party entitled to it. If both parties do not deliver the letter of instruction to the Escrow Agent and Title Company, the later may still act under and consistent with the Contract.

2. Purchase Price. The purchase price (the "Purchase Price") for the Property is Three Million Five Hundred Nineteen Thousand Dollars ($3,519.000.00) and is to be paid in full at the Closing as hereinafter defined plus or minus prorations and adjustments to be made pursuant to this Contract and immediately available in current funds by wire transfer to bank account or accounts to be designated in writing by the Escrow Agent and Title Company prior to Closing, transferred to an account or accounts designated in writing by Seller. Upon termination of this Contract pursuant to which the Earnest Money is refundable to the Town, the Earnest Money shall be promptly returned to the Town by the Title Company.

3. Town's Due Diligence; Inspection Period.

a. Seller grants to Town, its agents, contractors and employees, a license, terminable only upon the termination of this Contract, to inspect all of Seller's books and records concerning the physical condition of the Property (which books and records Town agrees to keep confidential), to review and analyze all information obtained by Town concerning the Property,

to obtain and review a commitment for title insurance and other title papers and reports evidencing the status of title to the Property, to obtain a survey of the Property (the Survey), and to enter upon the Property to make all studies, tests, and inspections deemed necessary or desirable by Town, including environmental site assessments. Town's performance of all studies, tests, and inspections is at its sole risk and expense.

b. Seller shall forward or make available to Town for copying or inspection within 5 days after the Effective Date all information in Seller's possession or control that would assist Town in assessing the Property, including but not limited to, surveys, environmental reports, geotechnical reports, leases, and other studies and documents requested by Town (the Inspection Documents), all without representation or warranty of any kind regarding accuracy or completeness, except as otherwise provided in this Contract, (provided, Seller represents to Town that Seller will provide or make available to Town complete copies of all material Inspection Documents in its files). The parties agree that Town has no need for, and the Inspection Documents provided to Town by Seller need not include, (i) information relating to the revenues, operating expenses, or profits of the Seller's business located on the Real Property, or (ii) any materials that Seller may possess regarding the market value of the Real Property, including, without limitation, any prior offers that Seller may have received from third parties with respect to the sale or lease of the Property or any portion thereof. Seller agrees to cooperate with Town in its inspections and review of the Property presently leased to Stohlman Subaru of Herndon LLC ("Stohlman") pursuant to that Lease Agreement dated August 1, 2006 (as amended, the "Stohlman Lease") at no cost and expense to Seller.

c. Town may, in Town's sole discretion, terminate this Contract by notifying Seller of Town's election to terminate under this Paragraph if Town is not satisfied as to the environmental condition of the Property, the condition as to the title to the Property or for any other reason or no reason, in its sole discretion, no later than 5:00 p.m., daylight savings time, on the date that is sixty (60) days after the Effective Date (the "Inspection Period"); provided, however, the Town may extend the Inspection Period by thirty (30) days upon written notice to Seller as the Town deems necessary to complete and review any environmental inspections and tests being conducted by or on behalf of the Town. If Town terminates this Contract under this Paragraph, then Escrow Agent shall promptly return the Earnest Money plus interest to Town and the parties thereafter shall have no further rights, liabilities, or obligations under this Contract except for any obligation which expressly survives the termination of this Contract.

d. If Town does not timely notify Seller of Town's election to terminate this Contract, then Town is deemed to waive its right to terminate this Contract under this Paragraph.

e. If the transaction contemplated by this Contract is not consummated for any reason, other than a default by Seller, Town agrees to deliver to David E. Feldman, Seller's counsel, promptly at no cost, lien, or expense to Seller after termination of this Contract (i) all Inspection Documents delivered to Town, and (ii) all non-privileged third-party written reports with respect to the Property prepared for Town which are in Town's possession and control, including, for example, any title report, survey, engineering reports, architectural reports, and environmental studies, water and soil studies, but excluding appraisals, marketing or land use reports and reports or data prepared internally by Town. This provision shall survive termination of this Contract for six (6) months.

f. Entry onto Property.

(i) Town, at its sole cost and expense, shall have access to the Property during normal business hours upon twenty-four (24) hours' notice (written or oral) to Seller and Stohlman or other occupant of the Property for the purpose of conducting such surveys, soil analysis, engineering tests and studies, environmental tests and studies, economic or topographic tests, studies, or inspections with respect to the Property as Town may deem necessary. Town agrees to perform all of the above tests and studies in accordance with all applicable regulations. Any such entry shall be in such a manner as to not unreasonably interfere with the business of any Stohlman or occupant and, further, shall be in compliance with the terms of any leases applicable to the Property consistent with this subparagraph of the Contract. . Within one (1) business day after the Effective Date, Seller shall provide the following to Town: the name, address, and telephone number for the Stohlman representative whom Town must contact in accordance with the terms of this subparagraph (i), and a copy of each lease affecting the Property. Notwithstanding anything to the contrary, Town shall not take core samples without (i) obtaining any necessary required permit(s) from applicable governmental authorities, and (ii) notifying Seller. Town shall provide to Seller duplicate copies of reports received by Town on any such core samples taken by or on behalf of Town without cost or expense to Seller and without any lien on such reports.

(ii) Town agrees to promptly, at its sole cost and expense, repair any damage to the Property caused in connection with such tests and studies. Town shall hold Seller harmless from and against all costs, expenses and liabilities incurred by Seller in connection with the tests and studies conducted by Town or its agents or contractors and Town's entry onto the Property pursuant to this Paragraph 3, and Town's repair and hold harmless obligations under this Paragraph 3 shall survive the Closing or any termination of this Contract. Town has no liability to Seller for any reduction in value to the Property that results from the discovery of matters or circumstances through Town's studies and tests.

(iii) During the Inspection Period and at all times prior to termination of this Contract or the Closing Date, Town shall maintain comprehensive public liability insurance (or otherwise self-insure) against claims for personal injury occurring on, in or about the Property. Town shall cause Seller to be listed as an "Additional Insured" on general liability policy maintained by Town or its affiliates with coverage limits of at least $1 million, and Town shall provide Seller with a certificate of such insurance prior to entry onto the Property.

4. **Title.**

a. **Title Commitment.** Within two (2) business days after the Effective Date, Town shall order from the Escrow Agent and Title Company, at Town's sole cost and expense, a Commitment for Title Insurance Policy (the **Title Commitment**) insuring Town's interest in the Property, and request copies of any recorded instruments that affect the Seller's title to the Property. Seller agrees to cooperate reasonably with Town in providing information, if any, possessed by Seller that may be of assistance in the completion of the Title Commitment or resolving any questions or discrepancies, provided that such cooperation shall impose no material costs upon Seller. Town shall deliver a copy of the Title Commitment to Seller not later than the date on which Town delivers any Title Objections (hereafter defined) that Town may

have with respect to the Property, as provided below. Town shall be responsible, at Town's cost, for having the Title Commitment updated prior to the Closing. Seller shall convey to Town good, marketable and insurable title to the Property.

b. **Title Objections.**

(i) Within thirty (30) days after the Effective Date (the **Title Notice Date),** Town or Town's counsel shall notify Seller, in writing, of (A) any objections that Town may have to Seller's title to the Property, as evidenced by any survey obtained by Town or Title Commitment, (B) any additional endorsements or commitments for additional affirmative title insurance that Town may require to render the Seller's title to the Property acceptable to Town, or (C) any affidavits or other materials required of Seller to address any title related matter that Town may deem to be required (collectively, the **Title Objections).**

(ii) Without limitation of Town's right to object to any matters that Town may deem appropriate, it is understood that, at a minimum, Town will require that the printed or standard explanation contained in the Title Commitment may at Town's discretion be addressed as follows:

(A) any exception for ad valorem taxes be endorsed "taxes for the current and subsequent years, not yet due and payable";

(B) any exception as to restrictive covenants be endorsed "None of Record" except as specified therein and approved by Town (and, if any such restrictive covenants exist, and that the applicable Title Commitment contain an endorsement assuring Town that no violations of such restrictive covenants exist);

(C) except as otherwise expressly set forth in this Contract, any exception for parties in possession be deleted;

(D) any exception as to unrecorded easements, visible and apparent easements, or other matters which would be disclosed by an inspection or survey of the Property be deleted;

(E) any exception as to mechanic's, materialmen's or similar liens or other matters relating to the completion of construction and payment of bills with respect thereto be deleted; and

(F) any exception as to areas, boundaries, discrepancies, encroachments and other matters which would be disclosed by a survey of the Property or applicable Parcel thereof be deleted.

Any printed or standard exception in the Title Commitment that is not consistent with the foregoing shall be deemed to have been timely objected to by Town, whether or not formally noted in Town's Title Objections.

(iii) Items affecting Seller's title to the Property as shown in the Title Commitment or survey on which Town's title review is based and not objected to (or deemed

objected to) by Town as aforesaid (or with respect to which Town's Title Objections is thereafter waived as provided below) shall be the **"Permitted Exceptions"** for purposes of this Contract and the deed. Town's failure to timely notify Seller of any Title Objections shall (other than the deemed objections noted above) be deemed Town's acceptance of the matters affecting title as shown in the applicable Title Commitment and the survey.

(iv) Seller has disclosed to the Town that a deck from the Ice House Café extends onto the Property (**"Encroachment"**). The Town objects to this Encroachment and requires that it be removed prior to Closing. During the Inspection Period, the Seller with the cooperation of Town will work in good faith towards a resolution for removal of the Encroachment prior to Closing or another resolution acceptable to the Town. Nothing in the last sentence affects or diminishes Town's rights under paragraph 3(c) above. Notwithstanding anything to the contrary, even if the Town proceeds to Closing, if the Encroachment has not been removed prior to Closing, then the Seller will with due diligence remove the Encroachment within six (6) months after Closing, and the Town agrees to cooperate with Seller in its removal. If the Encroachment has not been removed within such six (6) months, then the Town, at the cost of the Seller, may remove the Encroachment, and the Seller agrees to cooperate with Town in its removal. The Seller will upon demand reimburse the Town for its actual third party costs incurred in the removal of the Encroachment The Town and Seller will determine during the Inspection Period the amount of funds to escrow from the Seller to insure the removal and payment of costs for the removal of the Encroachment.

c. Correction of Title Objections.

(i) Within five (5) days of the giving by Town of the notice of its Title Objections as contemplated in Paragraph 4.b above, Seller shall notify Town and the Escrow Agent and Title Company of Seller's election as whether or not Seller will attempt to cure the Title Objections or provide the additional affidavits or other materials required by Town or the Escrow Agent and Title Company, it being agreed that Seller shall not be obligated to cure or attempt to cure any such Title Objections, except as provided in Paragraph 4.d below. If Seller fails to notify Town of Seller's decision to attempt to cure (or not) any such Title Objections or provide such additional materials, Seller shall be deemed to have elected not to attempt to cure any of such objections or provide any such materials as of the last day of such five (5) day period. If Seller does notify Town that it will attempt to cure any such Title Objections then, Seller shall have until thirty (30) business days prior to the expiration of the Inspection Period (the **Cure Period)** within which to complete the cure of any Title Objections that Seller elects to attempt to cure. If Seller desires to attempt to cure any Title Objection that cannot reasonably be cured within the Cure Period, then Seller and Town may, by mutual written contract, extend the Cure Period available to Seller to attempt to cure the Title Objection in question. Seller and Town may also enter into a mutually satisfactory written contract wherein Seller obligates itself to actually cure the Title Objection in question (as opposed to merely attempting to cure the Title Objection in question), in which event the actual cure of the Title Objection in question shall become an obligation of Seller pursuant to Paragraph 4.d(vi) below.

(ii) If Seller elects (or is deemed to have elected) not to cure any of such Title Objections or to provide any such materials (other than those which, pursuant to Paragraph 4.d below, Seller is required to cure or provide), Town shall, prior to the expiration of the Inspection

Period, either waive the Title Objection(s) or requirements that Seller is unwilling to cure or satisfy, or terminate this Contract by notice to Seller. In the event of any such termination, the Earnest Money shall be returned to Town by Escrow Agent and Title Company, and the parties shall be released and discharged from all claims and obligations to the other (except for such obligations that are intended to survive the termination of this Contract). If Town elects to waive the Title Objection(s) or requirements that Seller does not elect to cure or satisfy, then this Contract shall continue in full force and effect without any claim for damages, expenses, costs or liabilities related to such Title Objections as applicable. If Town fails to terminate this Contract by notice given as aforesaid, Town shall be deemed to have waived the uncured or unsatisfied Title Objections upon expiration of the Inspection Period, such waived Title Objections shall be Permitted Exceptions, and this Contract shall remain in full force and effect.

(iii) If Seller gives notice to Town that Seller proposes to attempt to correct or cure any Title Objections and such Title Objections have not been corrected, cured or approved within the time available to Seller to effect such cure as provided in subparagraph (i) above, then Town may, at any time thereafter, give written notice of termination of this Contract to Seller and the Escrow Agent and Title Company, and upon any such termination the Earnest Money shall be promptly returned to Town by Escrow Agent and Title Company.

(iv) To the extent, if any, that Seller proposes to "cure" a Title Objection raised by Town by providing affirmative title insurance over the Title Objection in question and Town is amenable to such a "cure" (Town being under no obligation to accept such a proffered "cure" of any Title Objection), then the proposed affirmative insurance over the Title Objection raised by Town must be satisfactory to Town and Town's counsel in their sole and absolute discretion.

d. **Limitations on Seller's Obligations.** Seller shall not be obligated to cure any Title Objections raised (or deemed raised) by Town, except that Seller shall be obligated to do the following:

(i) Seller shall be obligated at Closing to remove any and all existing mortgage liens or similar liens or encumbrances against the Property. Seller hereby represents to Town that the mortgages which currently affect the Property, if any, can and will be released as aforesaid prior to the Closing.

(ii) Seller shall be obligated at Closing to remove any mechanic's liens, judgment liens, or any other similar liens or encumbrances against the Property that can be released upon payment of money, regardless of amount.

(iii) Seller shall be obligated at Closing to deliver such title affidavits or similar materials as are customary for the issuance of title insurance for conveyance of fee title or leasehold estates, as applicable, in the area where the Property is located, including, without limitation, an affidavit confirming that, except as otherwise expressly set forth in this Contract, there are no parties in possession of the Property as of the Closing so as to allow the Title Policy to be issued without any exceptions for "parties in possession."

(iv) Seller shall be obligated at Closing to provide such evidence as may be required to evidence Seller's existence and authority enter into this Contract and to consummate

the transaction contemplated by this Contract, and the authority of the persons executing documents on behalf of Seller in the transaction.

(v) Except as otherwise expressly set forth in this Contract, Seller shall be obligated to deliver at Closing possession of the Property to Town free and clear of any tenancies or other rights of parties in possession except for the leasehold estate of Stohlman.

(vi) In addition to the foregoing matters, if (but only if) Seller has expressly agreed in writing that Seller will in fact cure a particular Title Objection not addressed in items (i)-(v) above (as opposed to merely attempting to cure the Title Objection in question) and Seller and Town have agreed upon a longer time period for Seller to effect the cure thereof than the Cure Period provided for in Paragraph 4.c(i) above, [it being acknowledged that, in certain cases, Seller and Town may agree that it is appropriate for Seller to cure a particular Title Objection at or near a Closing], then Town shall be entitled to rely upon Seller's contract to cure such Title Objection within the agreed period, and Seller shall be obligated to cure the Title Objection in question during the agreed period and any failure by Seller to cure such Title Objection shall be a default by Seller hereunder.

Without limitation of any other remedies that may be available to Town as a result of any breach by Seller of any of its affirmative obligations pursuant to Paragraphs 4.d(i)-(v) above (and Paragraph 4.d(vi) also, if applicable), Town shall be entitled to cure any such breach by Seller and to offset any amounts expended in curing, or attempting to cure, such default by Seller, against any amounts that may be due and owing to Seller by Town at closing.

e. **Seller's Title Covenants.** So long as this Contract is in effect, without the prior written consent of Town, which consent shall not be unreasonably withheld, conditioned or delayed, Seller shall not encumber the Property or any portion thereof or any interest therein, nor amend or modify any existing encumbrances in any manner which will adversely affect the Property or any portion thereof or impose any additional obligation with respect thereto. So long as this Contract is in effect, Seller shall not execute any deed or lease with respect to the Property or any portion thereof unless Town has received a copy thereof and expressly approves the same in writing; provided, however, the members of Seller may make transfers of membership interests in the Seller among family members or in connection with estate planning purposes. In addition, Seller shall be permitted with the prior written consent of Town, such consent not to be unreasonably withheld, conditioned, or delayed, to enter into leases with respect to the Property provided the terms of such leases expire on or before December 31, 2015, and are terminable upon thirty (30) days' notice thereafter. Additional liens for ad valorem taxes not currently due and payable that may hereafter attach to the Property as a result of the mere passage of time shall not be a breach of such covenant. Seller shall comply with all terms of any mortgage, encumbrance, or other contracts affecting the Property or any portion thereof and shall not permit a default thereunder to exist or occur so long as this Contract is in effect. If any monetary lien or liens against the Property have not been removed and satisfied prior to Closing, then at Closing Seller shall fully pay and satisfy said monetary liens or liens at closing.

f. **Form of Title Policy.** The Title Policy to be obtained by Town at Closing shall be consistent with the Title Commitment finally approved by Town pursuant to this Paragraph 3. Town shall not be obligated to close the transaction at Closing if Town is unable to obtain the

Title Policy for the Property consistent with the Title Commitment for the Property as approved, or deemed approved, by Town pursuant to the foregoing procedures, for any reason other than a breach by Town of its obligations hereunder. If the unavailability of the Title Policy arises out of Seller's failure or refusal to comply with any of its obligations under this Contract, including, without limitation, Paragraphs 4.c, 4.d, and 4.e, Seller shall be in default, and Town may pursue its remedies hereunder.

g. **Stohlman Lease.** At Closing, Seller will assign to Town and Town will assume the Stohlman Lease at Closing. Seller will assign and transfer to the Town the security deposits and guarantees under the Stohlman Lease. In such event, Seller shall indemnify, defend, and hold Town harmless from any and all liabilities, claims, demands, damages, and causes of actions that may be made or asserted against Town arising out of or related to the Stohlman Lease for acts or omissions of Seller occurring prior to the date of Closing. Town shall and hold Seller harmless from any and all liabilities, claims, demands, damages, and causes of actions that may be made or asserted against Seller arising out of or related to the Stohlman Lease for Town's acts or omissions occurring on or after the date of Closing.

5. Closing.

a. The closing of this Contract **(Closing)** will occur in Escrow Agent and Title Company's s offices thirty (30) days after the expiration of the Inspection Period. The date of the Closing is referred to herein as the **"Closing Date."**

b. **At the Closing:**

(i) Seller must deliver to Town:

(A) a Special Warranty Deed with covenants of further assurances for the Property in proper statutory form for recording in Fairfax County, Virginia;

(B) a bill of sale in form acceptable to Town conveying all of Seller's rights in and ownership of any personal property located on the Property that is used in connection with the operation of the Property, subject, however, excepting any personal property owned by Stohlman as tenant under the Stohlman Lease;

(C) a Non-Foreign Affidavit in accordance with the provisions of Section 1445(b)(2) of the Internal Revenue Code of 1986, as amended;

(D) a certificate that Seller's representations and warranties continue to be true and correct as of the Closing Date;

(E) affidavits and other documents in standard form required by the Escrow Agent and Title Company to issue an Owner Policy to Town listing only the Permitted Exceptions;

(F) any other documents deemed necessary by Escrow Agent and Title Company or Town's counsel in their reasonable discretion, including authority documents of Seller;

(G) an assignment of the Stohlman Lease in form acceptable to the Town; and

(H) except as otherwise expressly set forth in this Contract, exclusive possession of the Property.

Both parties agree to duly execute and deliver all other documents reasonably necessary to consummate this transaction, including, without limitation, a settlement statement setting forth the charges, credits and adjustments to each party.

6. Conditions to Town's Obligation to Close. The following conditions must be satisfied before Town is obligated to close under this Contract:

a. Town and Seller have executed and delivered all documents required under Paragraph 5 hereof;

b. That no material adverse change shall have occurred in the environmental or physical condition of the Property since the expiration of the Inspection Period (other than arising from the actions or fault of Town or its affiliates or contractors). It is expressly agreed, in this regard, that the mere discovery by Town of information that existed at the time of Town's inspection of the Property prior to expiration of the Inspection Period but was not revealed by such inspection and/or was not properly analyzed by Town shall not cause this contingency to be unsatisfied; or

c. The Seller's representations, warranties and covenants in this Contract are and remain true and correct in all material respects;

d. Seller is not in default of this Contract;

e. Except as otherwise expressly set forth in this Contract, the Property is vacant of all parties other than Seller and free of all leases and other encumbrances other than Permitted Exceptions.

f. The Encroachment has been resolved in a manner satisfactorily to the Town.

In the event that any of these conditions is not met by the date of Closing, Town may either: (i) terminate this Contract by written notice to Seller and the parties shall thereafter have no further rights, liabilities, or obligations under this Contract except for those that expressly survive termination of this Contract and, except in the event the failure of such conditions was a result of a default by Town under the terms of this Contract, the Town shall be entitled to return of the Earnest Money; (ii) in the event the failure of such conditions was a result of a default by Seller to pursue it remedies under this Contract (subject, however, if Seller is unable to have the Encroachment removed prior to Closing this will not be a default of Seller under this Contract) or (iii) proceed to close the transaction without diminution in the Purchase Price.

7. Prorations and Closing Costs.

a. Ad valorem taxes against the Property will be prorated at Closing as of the Closing Date based on the tax bills for the year of Closing.

b. Seller shall pay to Escrow Agent and Title Company at Closing all additional taxes owing on those tax lot parcels and Escrow Agent and Title Company shall use the funds to pay all taxes owing on the tax lot parcels.

c. Water and utility charges with respect to the Real Property shall be adjusted and prorated between Seller and Town as of the Closing Date. Seller and Town each agree to pay their own respective attorney's fees. Town shall pay all premiums for the Title Policy. The Seller shall also pay the cost of obtaining releases of all monetary liens encumbering the Property. Town shall pay all expenses of examination of title, survey costs, all reasonable fees and expenses of the Survey, and all recording fees, taxes and costs properly allocated to Town. Seller shall pay the grantor's tax, the regional congestion relief fee and fee for recording deed. The parties shall split evenly the costs of the Escrow Agent and Title Company in performing escrow and closing services (but not title services for Town).

8. Town's Defaults; Seller's Remedies; Liquidated Damages. If Town is in default hereunder, and such default is not cured within 5 days after written notice, then Seller shall be entitled to terminate this Contract and receive or retain the Earnest Money as liquidated damages and as Seller's only remedy, waiving all other remedies at law and in equity, the parties agreeing that the Earnest Money represent the parties' best estimate of the damages to be suffered by Seller in the event of Town's default, it being impossible for the parties to determine Seller's actual damage in the event of such default. In the event of such termination, the parties shall have no further rights, liabilities, or obligations under this Contract (other than those that expressly survive termination).

9. Seller's Defaults; Town's Remedies. Upon any failure of Seller to perform its obligations under this Contract in accordance with the terms and conditions hereof or Seller is in default of this Contract, and such default is not cured within 5 days after written notice, Town shall be entitled, as its sole remedy, at law or equity, (i) to elect to receive upon demand a return of the Earnest Money plus interest theretofore made, and this Contract shall thereupon terminate and the parties shall have no further rights, liabilities, or obligations under this Contract (other than those that expressly survive termination), or (ii) to seek specific performance of the Contract, or (iii) if (but only if) the default of Seller in question is one for which specific performance is either not an available remedy or is insufficient to provide Town the full benefit of its bargain, then and only then Town may to bring an action for damages against Seller. In the event Town terminates this Contract as a result of Seller's default as aforesaid, Escrow Agent and Title Company shall immediately return the Earnest Money to Town.

10. Return of Earnest Money Deposit. In the event Town becomes entitled to receive a return of the Earnest Money in accordance with the terms of this Contract, this Contract authorizes the Escrow Agent and Title Company to release the Earnest Money to Town. In the event Seller wrongfully fails or refuses to authorize the Escrow Agent and Title Company to do so, if applicable, then Seller shall pay, upon demand from Town, all reasonable attorney's fees and related costs incurred by Town in connection with its recovery of the Earnest Money.

11. Commissions. Each party warrants to the other party that it has not dealt with any real estate broker or salesperson in the negotiation of this Contract and shall hold the other party harmless from and against any and all claims for broker's commissions made by any other person claiming through the party to this Contract and the provisions of this Section 11 shall survive closing.

12. Representations and Warranties.

A. Seller's Representations and Warranties. Seller represents and warrants to Town as follows (which representations and warranties are also deemed made by Seller to Town at Closing and survive Closing):

a. Seller, to the best of its actual knowledge and belief, has good and marketable title to the Property subject only to the Permitted Exceptions.

b. Except as otherwise expressly provided herein, at Closing there will be no parties in possession of any portion of the Property as Towns, tenants at sufferance or trespassers, and no leases will affect the Property. Seller has not granted any rights to purchase any portion of the Property to any party other than Town.

c. There is no pending condemnation or similar proceeding or special assessment, or change in zoning affecting the Property.

d. Seller, to the best of its actual knowledge and belief, is not aware of any use, operation or occupancy on the Property that violates any applicable statute, ordinance, code, rule, or regulation of any governmental authority, nor has Seller received any notice concerning the Property violating any applicable statute, ordinance, code, rule, or regulation or stating that any investigation has commenced or is contemplated regarding any violation.

e. There is no pending or, to the best of Seller's actual knowledge and belief, threatened litigation or administrative proceeding affecting Seller or the Property.

f. The execution and delivery of, and Seller's performance under, this Contract are within Seller's powers and have been duly authorized by all requisite actions. This Contract constitutes a binding obligation of Seller enforceable in accordance with its terms and will not result in a default under or the imposition of any lien or encumbrance upon the Property under, any contract or other contract that affects Seller or the Property.

g. There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under other debtor relief laws contemplated by, pending, or threatened against Seller.

h. To the best of Seller's actual knowledge and belief, the Property has not been used for the disposal or dumping of nor has there been any spillage, seepage, or uncontrolled loss on or filtration from or onto the Property of any substance or materials deemed hazardous by any applicable governmental authority, law, statute, code provision or ordinance. Seller hereby discloses that, at some time in the past there may have been spillage or seepage on the Property either caused by the occupant thereon or a neighboring property but, to the best of the Seller's

actual knowledge and belief, the same was removed in accordance with the provisions of applicable law. Seller hereby discloses that, at some time in the past there were or may have been gasoline service stations or automobile repair stations on the Property, but, to the best of Seller's actual knowledge and belief, no underground storage tanks remain on the Property.

i. Except as otherwise expressly set forth in this Contract, to the best of Seller's actual knowledge and belief, there are no underground storage tanks (as defined under applicable law) located in, on, under, or, to Seller's knowledge, adjacent to the Property. To the best of Seller's actual knowledge and belief, Seller has no reason to believe and does not believe that any hazardous materials or petroleum have seeped or flowed onto or into the Property from other sites or from the Property onto or into any other sites.

j. Seller has delivered a true and complete copy of the Stohlman Lease to the Town. Neither Seller nor, to the knowledge of Seller, Stohlman, is in default under any Stohlman Lease, nor, to the knowledge of Seller, has any event occurred or failed to occur which, with the passage of time and/or the giving of notice, would constitute a default or event of default under any of the Stohlman Lease. Stohlman has not paid any rent or additional rent for more than one (1) month in advance. All work required to be performed by the landlord either as tenant improvements or inducements, if any, under the Stohlman Lease has been completed, fully paid for and accepted by the tenant thereunder. At Closing, neither the Stohlman Lease nor the security deposits made thereunder will be subject to any liens, claims or security interests created by, through or under Seller, except for any liens, claims or security interests in the security deposits in favor of the lessee under the Stohlman Lease. There are no brokerage or leasing commissions due and payable in connection with the leases.

k. Seller has delivered to the Town no later than five (5) business days after the Effective Date a true and complete copy of any and all documents, correspondence or other information with respect to the Encroachment in Seller's possession.

Except as otherwise specifically provided in this Contract, the Property is offered to Town in its "AS-IS, WHERE-IS" physical condition, with all faults and without representations or warranties of any type, express or implied, regarding the physical condition thereof.

If any of Seller's representations and warranties are discovered to be incorrect at or prior to the Closing in any material respect, then Town, at its sole option may terminate this Contract on or before the Closing Date by giving notice to Seller or otherwise exercise it remedies under this Contract. Prior to exercising its right to terminate this Contract, Town shall provide written notice to Seller with respect to the incorrect representation and warranty and Seller shall have until the earlier of (a) ten (10) business days from delivery of the notice, or (b) the Closing Date, to cure such matter. If the cure is not accomplished within the required period, then Town may exercise its right to terminate this Contract, pursue its remedies under this Contract or proceed to Closing without diminution in the Purchase Price. Upon termination, Escrow Agent and Title Company shall promptly return the Earnest Money plus interest to Town, and the parties thereafter shall have no further rights, obligations, or liabilities under this Contract except for such obligations that expressly survive the termination of this Contract.

B. Town's Representations and Warranties. For the purpose of inducing Seller to enter into this Contract and to consummate the transactions contemplated hereby pursuant to the terms and conditions hereof, Town represents to Seller, as of the date hereof, the matters set forth below, all of which representations shall survive the Closing, (subject to the limitations provided for in Paragraph 21):

(a) Town is duly authorized in the execution of this Contract, and is (or as of the Closing Date will be) authorized to proceed to Closing; and

(b) Town has the power to enter into this Contract and to consummate the transaction contemplated herein.

13. Seller's Covenants.

Seller shall, at Seller's sole cost and expense:

a. Promptly advise Town in writing of any litigation or hearing or notice received or any material changes of facts that cause any of Seller's representations or warranties to be inaccurate in any material respect.

b. Not take any action or omit to take any action that could have the effect of violating in any material respect any representations, warranties, or contracts of Seller in this Contract.

c. Cooperate with Town during the Inspection Period and provide to Town copies of documents concerning the Property that are in Seller's possession upon request of Town.

d. From the Effective Date until the Closing or earlier termination of this Contract, shall not commit any waste on the Property.

e. To use commercially reasonable efforts to obtain an estoppel certificate prior to expiration of the Inspection Period from Stohlman under the Stohlman Lease in form reasonably acceptable to the Town.

14. Assignment.

a. The terms and provisions of this Contract shall inure to, extend to and be for the benefit of the heirs, successors, permitted assigns, and legal representatives of the respective parties hereto. The Contract may not be assigned without the consent of the non-assigning party. The consent shall not be unreasonably withheld.

b. No assignment of this Contract shall relieve Town or Seller of its obligations under this Contract until Closing provided that such assignee has assumed all of Town's obligations under this Contract and Town's assignee, at Closing, has satisfied all of Town's obligations under this Contract to be performed as of the Closing.

c. A party's consent to any assignment of this Contract shall not be unreasonably withheld, conditioned, or delayed. If a party requires the consent of the other to an assignment,

the assigning party shall promptly submit to the other party, but at least thirty (30) days prior to the effective date of the assignment, written notice, a complete copy of the assignment documents and such other information as the non-assigning party may reasonably request.

d. In addition, Town shall have the right to designate one or more entities to take title to all or a portion of the Property at Closing, and the obligations of Seller to Town set forth in this Contract that survive the Closing shall also accrue to and benefit such designees as to the portion of the Property each such designee acquires.

15. Notices. All notices, requests, approvals, and other communications required or permitted to be delivered under this Contract must be in writing and are effective on the business day sent if sent by e-mail or telecopier prior to 5:00 p.m., local time in the Commonwealth, and the sending an e-mail or telecopier generates a written confirmation of sending or a copy is sent by one of the other authorized methods of delivery; upon receipt if delivered personally; on the next business day after delivery to a nationally recognized, overnight courier service on a business day; or on the business day of deposit in the United States mail, certified, return receipt requested, postage prepaid; in each instance addressed to Seller or Town, as the case may be, at the following addresses, or to any other address either party may designate by notice to the other party:

Seller:	Ashwell, L.L.C. 11626 Ayreshire Road Oakton, Virginia 22120 Attention: Mr. Ron Ashwell Phone: (703) 244-3315 E-mail: taxski05@yahoo.com
With a copy to:	David E. Feldman, Esquire Odin, Feldman & Pittleman, P.C. 1775 Wiehle Avenue, Suite 400 Reston, VA 20190 Phone: (703) 218-2108 Fax: (703) 218-2046 Email: David.Feldman@ofplaw.com
Town:	Attn: Arthur Anselene, Town Manager 777 Lynn Street, Suite 105 P.O. Box 427 Herndon, VA 20172-0427 Phone: (703) 787-7368 Fax: (703) 787-7325 Email: town.manager@herndon-va.gov
With a copy to:	Grayson P. Hanes, Esquire Reed Smith LLP 3110 Fairview Park Dr #1400 Falls Church, VA 22042

Phone: (703) 641-4292
Fax: (703) 641-4340
Email: ghanes@reedsmith.com

16. **Performances.** Time is of the essence in the performance of the terms of this Contract.

17. **Binding Effect.** This Contract is binding upon and inures to the benefit of the successors and permitted assigns of the parties.

18. **Entire Contract; Counterparts.** This Contract embodies the complete contract between the parties and may not be varied or terminated except by written contract of Town and Seller. This Contract may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

19. **Facsimile and Electronic Signatures.** Any party may execute this Contract by delivery to the other party of a facsimile or electronic copy hereof evidencing such party's signature. In any such case the party executing by facsimile or electronic mail shall promptly thereafter provide a signed original counterpart hereof to the other parties; provided, that the non-delivery of such a signed counterpart shall not affect the validity or enforceability hereof.

20. **Attorney Fees.** If either party shall institute legal proceedings against the other in connection with this Agreement, or any claim of breach hereunder, the non-prevailing party in such proceedings shall pay the costs and expenses incurred by the prevailing party in such proceedings, including reasonable attorneys' fees and court costs incurred by the prevailing party before and at trial, and in any successful appeal therefrom.

21. **Severability.** If any provision of this Contract shall, for any reason, be held violative of any applicable law, and so much of this Contract is held to be unenforceable, then the invalidity of such specific herein shall not be held to invalidate any other provision herein which shall remain in full force and effect. Further, in such event there shall automatically be deemed added hereto a new provision as close in substance and content to the invalid provision as may be valid.

22. **Survival.** The respective representations, covenants, and contracts of the parties herein contained shall survive either Closing or termination of the Contract; provided, that the representations and warranties of the parties as set forth in Paragraph 12 hereof shall survive Closing only for a period of twelve (12) months and no claim may be made with respect to any alleged breach of such representations or warranties unless a claim of breach has been made in writing to the alleged breaching party with such twelve (12) month period.

23. **Holidays, Business Days.** Whenever any time limit or date specified in this Contract falls on a Saturday, Sunday, or legal holiday under State laws, then that date is extended to the next day that is not a Saturday, Sunday, or legal holiday. The term business day means any day that is not a Saturday, Sunday, or legal holiday under State laws.

24. **Governing Law.** The laws of the Commonwealth of Virginia govern this Contract, without regard to conflicts of laws principles.

25. **Risk of Loss.** Seller bears the risk of loss or damage to the Property prior to Closing. If Town terminates this Contract under this Paragraph, then Escrow Agent shall promptly return the Earnest Money to Town and the parties thereafter shall have no further rights, liabilities, or obligations under this Contract. Seller represents and warrants to Town that Seller maintains and will continue to maintain until Closing casualty insurance on the Property for the full replacement value. In the event of a casualty affecting the Property, Town shall not have a right to terminate this Contract; provided, however, Town shall be entitled to any insurance proceeds payable in connection with such casualty which proceeds shall be paid to Town at Closing or, in the event such proceeds have not been paid by the insurer prior to Closing, Seller shall assign its rights to such proceeds to Town at Closing and the Seller shall pay to the Town any deductible under the insurance proceeds. In the event of a casualty, the Town must approve any settlement or compromise with the Seller's insurance company.

26. **Recording of Contract.** Town agrees not to record this Contract among the land records of Fairfax County, Virginia, and if Town so causes the recordation of the same, at the option of Seller, Seller may declare Town in default without any right to cure such default and terminate this Contract, in which event the Earnest Money shall be forfeited to Seller as liquidated damages. In the event of such termination, the parties thereafter shall have no further rights, liabilities, or obligations under this Contract except any obligation under this Contract that expressly survives termination of this Contract. This provision does not affect the Town's right to file a lis pendens or other lawsuit in the event of Seller's default of this Contract.

27. **Headings.** Paragraph headings or captions are used in this Contract for convenience only and do not limit or otherwise affect the meaning of any provision of this Contract.

28. Reserved.

29. **Relationship of Parties.** Nothing herein contained shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent or of a partnership or a joint venture between the parties hereto.

30. **1031 Exchange.** Both Town and Seller acknowledges that the other may elect to engage in a non-simultaneous, like kind exchange (an **Exchange**) intended to qualify for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code of 1986, as amended (the **Code**). Each agrees to reasonably cooperate with the other to so consummate this transaction to permit an Exchange by the other, provided that (i) the Closing Date shall not be delayed or affected by the Exchange nor shall the accomplishment of the Exchange be a condition precedent or condition subsequent to the obligations under this Contract of the party conducting the Exchange, (ii) the party conducting an Exchange shall effect the Exchange through a qualified intermediary and the other party shall not be required to take an assignment of the purchase contract for the exchange property or be required to acquire or hold title to any real property for the purpose of consummating such Exchange, and (iii) the party conducting the Exchange shall pay any additional costs that would not otherwise have been incurred by the parties had such party not consummated this transaction through the Exchange. If either party elects to engage in an Exchange, such party may upon written notice to the other assign all of its right, title and interest in and to the Contract to a "qualified intermediary," as defined in Treasury Regulation Section 1.1031(k)-1(g) **(Intermediary),** selected by such party effecting the Exchange (the

Exchanger). Such an assignment of Exchanger's rights under this Contract to Intermediary shall not require the consent of the other party or render Intermediary a party or an additional obligor with respect to the contracts and obligations of the Exchanger. Such assignment shall in no way release Exchanger from its contracts and obligations under this Contract.

31. **OFAC; Anti-Money Laundering Laws.** Town and Seller each represents, warrants and covenants to the other as follows:

(a) It is not now, nor shall it be at any time until Closing, an individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity with whom a United States citizen, entity organized under the laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories (collectively, a "**U.S. Person**"), is prohibited from transacting business of the type contemplated by this Contract, whether such prohibition arises under United States law, regulation, executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC "Specially Designated Nationals and Blocked Persons") or otherwise.

(b) Neither it, nor any Person who owns a direct interest in it (collectively, a "**Purchaser Party**" or "**Seller Party**", as applicable), is now, nor shall be at any time until Closing, a Person with whom a U.S. Person, including a United States Financial Institution as defined in 31 U.S.C. 5312, as periodically amended ("**Financial Institution**"), is prohibited from transacting business of the type contemplated by this Contract, whether such prohibition arises under United States law, regulation, executive orders and lists published by the OFAC (including those executive orders and lists published by OFAC with respect to Specially Designated Nationals and Blocked Persons) or otherwise.

(c) It has taken, and shall continue to take until Closing, such measures as are required by law to assure that the funds used to pay the amounts payable by it under this Contract are derived (i) from transactions that do not violate United States law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (ii) from permissible sources under United States law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated.

(d) To the best of its knowledge after due inquiry, neither it, nor any Purchaser Party or Seller Party, as the case may be, nor any Person providing funds to it (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti Money Laundering Laws; (ii) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws (as defined herein); or (iii) has had any of its funds seized or forfeited in any action under any Anti Money Laundering Laws. For purposes of this Section 13.3.4, the term

"**Anti-Money Laundering Laws**" means laws, regulations and sanctions, state and federal, criminal and civil, that (1) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (2) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (3) require identification and documentation of the parties with whom a Financial Institution conducts business; or (4) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include the USA PATRIOT Act of 2001, Pub. L. No. 107-56 (the "**Patriot Act**"), the Bank Secrecy Act, 31 U.S.C. Section 5311 et seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

(e) It is in compliance with any and all applicable provisions of the Patriot Act, and the foregoing representation shall be true and correct as of the Closing Date. The provisions of this Section 31 shall survive the Closing or the earlier termination of this Contract.

32. Miscellaneous.

(a) Headings. The headings preceding the text of the paragraphs and subparagraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Contract, nor shall they affect its meaning, construction or effect.

(b) Submission Not an Offer. The submission of this Contract or a summary of some or all of its provisions for examination or negotiation by Town or Seller does not constitute an offer by Seller or Town to enter into an contract to sell or purchase the Property, and neither Party shall have any obligation to purchase or to sell, as applicable, until this Contract is signed by both Parties, in which event it shall be binding on both Parties thereafter.

(c) Further Assurances. Each of the Parties agrees that upon written request from the other Party following the Closing, and without further consideration, such Party shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts or instruments as shall be reasonably requested by a Party in order to effect or carryout the transactions contemplated by this Contract provided same do not impose any obligations or liabilities upon the Party not contemplated in this Contract. The provisions of this Section 32(c) shall survive the Closing.

(d) Construction. This Contract have been negotiated at arm's length by Seller and Town, and the Parties mutually agree that for the purpose of construing the terms of this Contract, neither Party shall be deemed responsible for the authorship thereof. This Contract shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that both Seller and Town have contributed substantially and materially to the preparation of this Contract.

(e) Consultation with Legal Counsel. Seller and Purchaser each acknowledge that it has consulted with, or has had the opportunity to consult with, independent legal counsel of its choice prior to entering into this Contract.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

EXECUTED by Town of Herndon on _____, 2015.

TOWN:

TOWN OF HERNDON

By:_____

Name: Lisa C. Merkel

Title: Mayor

EXECUTED by Seller on May 11, 2015.

SELLER:

ASHWELL, L.L.C.

By: Ronald K Ashwell

Name: Ronald K. Ashwell

Title: Manager

The undersigned acknowledges receipt of the Earnest Money and for valuable consideration shall hold and disburse the Earnest Money in accordance with the terms of this Contract.

ESCROW AGENT and Title Company:

STEWART TITLE AND ESCROW, INC.,

By:_____
Name:_____
Title:_____

_____, 2015

EXHIBIT A - THE REAL PROPERTY

Approximately 72,968 square feet of real property located at 770 and 782 Elden Street and 724 Center Street, in the Town of Herndon, Fairfax County, Virginia (identified as Fairfax County Tax Map 0162-02, Parcels 26, 27A and 29)