

REAL ESTATE SALES CONTRACT

This real estate sales contract (this "**Agreement**") is between Seller and Buyer as identified below and is effective as of _____ ("**Effective Date**").

Seller: South 720, L.P.

Address: Baxter Brinkmann
c/o Kirk Williams, Esq.
Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, TX 75201

Phone: 214.745.5746

Fax: 214.745.5390

E-mail: kwilliams@winstead.com

Type of entity: Texas limited partnership

Seller's Attorney: Kirk Williams, Esq.

Address: See above

Seller's Broker: None

Buyer: City of McKinney, Texas

Address: c/o Cinthia Ganotis
221 North Tennessee Street
P.O. Box 517
McKinney, TX 75070

Phone: 972.562.6080

Fax: 972.547.2604

E-mail: cganotis@mckinneytexas.org

Type of entity: Texas municipal corporation

Buyer's Attorney: Mark Houser, Esq., Brown & Hofmeister L.L.P.

Address: 740 E. Campbell Road, Suite 800
Richardson, Texas 75081

Phone: (214) 747-6120

Fax: (214) 747-6111

E-mail: mhouser@bhlaw.net

Buyer's Broker: None

Property: That certain tract of land located in McKinney, Collin County, Texas comprising ± .0491 acres out of the John McGarrah Survey, Abstract No. 572, being a part of that called 27.931 acre tract described by deed to South 720, L.P. and recorded in the Deed Records of Collin County, Texas at Vol. 4653, Page 2146, and described in more detail in Exhibit A; and

That certain tract of land located in McKinney, Collin County, Texas comprising ± 1.451 acres out of the John McGarrah Survey, Abstract No. 572, being a part of that called 27.931 acre tract described by deed to South 720, L.P. and recorded in the Deed Records of Collin County, Texas at Vol. 4653, Page 2146, and described in more detail in Exhibit A; (collectively, the "**Land**"),

Title Company:

Address:

Phone:

Fax:

E-mail:

Purchase Price

Cash: Seven hundred sixty-one thousand three hundred and forty-two and no/100 dollars (\$761,342.00)

Total purchase price: \$761,342.00

Earnest Money: N/A

Surveyor: North Texas Surveying, L.L.C.

Seller's Additional Liquidated Damages: None

County for Performance: Collin

A. Deadlines and Other Dates

All deadlines in this Agreement expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1. Earnest Money Deadline: None, Intentionally deleted.
2. Delivery of Title Commitment: 10 days after the Effective Date
3. Delivery of Survey: 15 days after the Effective Date
4. Delivery of legible copies of instruments referenced in the Title Commitment and Survey: 10 days after the Effective Date
5. Delivery of Title Objections: 15 days after delivery of the Title Commitment, Survey, and legible copies of the instruments referenced in them.
6. Inspection Period. Shall commence upon the Buyer's receipt of the latest of the Title Commitment and Survey, and shall expire thirty (30) days from the commencement of the Inspection Period.
7. Closing Date: December 30, 2015.

B. Closing Documents

1. At closing, Seller will deliver the following items:

Special Warranty Deed; in a form reasonably acceptable to Buyer.

2. At closing, Buyer will deliver the following items:

Purchase Price

The documents listed in this section B are collectively known as the "**Closing Documents**".

C. Exhibits

The following are attached to and are a part of this Agreement:

Exhibit A--Description of the Land

Exhibit B--Representations; Environmental Matters

D. Purchase and Sale of Property

Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this Agreement are the consideration for the formation of this Agreement.

E. Interest on Earnest Money

None, intentionally deleted.

F. Title, Survey, and Inspection

1. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.

2. *Title Commitment; Title Policy.* "**Title Commitment**" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this Agreement. "**Title Policy**" means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.

3. *Survey.* "**Survey**" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Title Company, dated after the Effective Date, and certified to comply with the current standards

and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

4. *Delivery of Title Commitment, Survey, and Legible Copies.* Title Company must deliver the Title Commitment to Buyer by the deadline stated in section A.2.; the Survey by the deadline stated in section A.3.; and legible copies of the instruments referenced in the Title Commitment and Survey by the deadline stated in section A.4.

5. *Title Objections.* Buyer has until the deadline stated in section A.5. ("**Title Objection Deadline**") to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them ("**Title Objections**"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "**Permitted Exceptions**". If Buyer notifies Seller of any Title Objections, Seller may, within five days after receipt of Buyer's notice, notify Buyer whether Seller agrees to cure the Title Objections before closing ("**Cure Notice**"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five days after the deadline for the giving of Seller's Cure Notice, notify Seller that either this Agreement is terminated or Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date. If Seller fails or refuses to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, and/or remove all exceptions that arise by, through, or under Seller after the Effective Date, Buyer may, at its sole election (a) terminate this agreement, or (b) seek specific performance or damages. Notwithstanding anything herein to the contrary, Buyer shall be deemed to have elected to terminate this agreement if Buyer fails to deliver to Seller written notice of its intent to file a claim or assert a cause of action for specific performance against Seller on or before thirty (30) days following the scheduled Closing Date or, having given such notice, fails to file a lawsuit asserting such claim or cause of action in the county in which the Property is located within two (2) months following the scheduled Closing Date. If Buyer fails to close, Seller may terminate this agreement and receive the Earnest Money, as its sole remedy.

6. *Inspection Right of Access.* Buyer and its representatives may inspect, at reasonable hours, the Land and such inspection shall take place subject to the following: (a) Buyer may not conduct any physically intrusive inspections of the Property without the prior written consent of Seller, not to be unreasonably withheld; and (b) all inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Buyer relating to inspection of the Land will be paid by Buyer, and Buyer will not permit any lien to attach to the Land in connection therewith. If Buyer causes any damage to the Property as a result of Buyer's inspection of the Property, and this agreement is terminated for any reason prior to closing, Buyer shall restore the Property to its condition prior to entry by Buyer. Prior to performing

any inspection or test on the Property, Buyer must deliver a certificate of insurance to Seller, evidencing that Buyer and its contractors, agents and representatives have in place reasonable amounts of commercial general liability insurance and workers compensation insurance for Buyer's activities on the Property in terms and amounts reasonably satisfactory to Seller covering any accident arising in connection with the presence of Buyer, its contractors, agents and representatives on the Property, which insurance shall name Seller as an additional insured thereunder. To the extent allowed by Texas law, Buyer hereby agrees to indemnify, defend and hold Seller harmless from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including reasonable attorneys' fees) arising out of Buyer's inspections or tests permitted under this agreement.

7. *Inspection Period.* Seller agrees that Buyer shall have until the deadline stated in section A.6 (the "Inspection Period") in which to determine whether Buyer wishes to purchase the Land. If, within the Inspection Period, Buyer shall, for any reason in Buyer's sole discretion, disapprove or be dissatisfied with any aspect of the Land, or for no reason whatsoever, then Buyer shall be entitled to terminate this Agreement by giving written notice thereof to Seller on or before the expiration of the Inspection Period, and this Agreement shall terminate and, except for any obligations which expressly survive termination, the Parties shall have no further obligations or liabilities under this Agreement. Should Buyer exercise this right to terminate, a copy of all environmental, engineering, soil, topographical, utility or other information obtained in connection with the prospective purchase of the Land shall be provided to Seller. This obligation shall survive the termination of this Agreement.

G. Representations

The parties' representations stated in **Exhibit B** are true and correct as of the Effective Date and must be true and correct on the Closing Date.

H. Closing

1. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

- a. *Closing Documents.* The parties will execute and deliver the Closing Documents.
- b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this Agreement to Title Company in funds acceptable to Title Company.
- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance

with this Agreement, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.

- e. *Possession.* Seller will deliver possession of the Property to Buyer, at closing.

2. *Transaction Costs*

- a. *Seller's Costs.* Seller's attorney's fees and the ad valorem taxes as set forth in Section H.2.c., below.
- b. *Buyer's Costs.* Buyer will pay all costs charged by Title Company; any premium(s) for the Title Policy; the costs to obtain, deliver, and record all documents; the costs to obtain the Survey and certificates or reports of ad valorem taxes; the additional premium for the "survey/area and boundary deletion" in the Title Policy, if the deletion is requested by Buyer; the costs of work required by Buyer to have the survey reflect matters other than those required under this Agreement; and Buyer's expenses and attorney's fees.
- c. *Ad Valorem Taxes.* Ad valorem taxes for the Property for the calendar year of closing will be paid by Seller as of the Closing Date, pursuant to Texas Tax Code 26.11. If the Property has been the subject of special valuation and reduced tax assessments pursuant to the provisions of chapter 23, subchapter D, of the Texas Tax Code with respect to any period before the closing and additional taxes are assessed pursuant to section 23.55 thereof, the following will apply: If Seller changes the use of the Property before closing, resulting in the assessment of additional taxes for periods before closing, Seller will pay the additional taxes.
- d. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen days of receipt of notice of the errors.

I. **Special Provisions:**

None; intentionally omitted

J. **Miscellaneous Provisions**

1. *Notices.* Any notice required by or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, electronic mail, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

2. *Entire Contract.* This Agreement, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property by Seller to Buyer not incorporated in writing in this Agreement.

3. *Amendment.* This Agreement may be amended only by an instrument in writing signed by the parties.

4. *Prohibition of Assignment.* Buyer may not assign this Agreement or any of Buyer's rights under it without Seller's prior written consent, and any attempted assignment is void. This Agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

5. *Survival.* The obligations of this Agreement that cannot be performed before termination of this Agreement or before closing will survive termination of this Agreement or closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this Agreement, the Closing Documents will control.

6. *Choice of Law; Venue; Alternative Dispute Resolution.* This Agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the County for Performance, except as otherwise provided by applicable law. Time permitting, the parties will submit in good faith to an alternative dispute resolution process before filing a suit concerning this Agreement.

7. *Waiver of Default.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays taking any action with respect to the default.

8. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this Agreement.

9. *Severability.* The provisions of this Agreement are severable. If a court of competent jurisdiction finds that any provision of this Agreement is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

10. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

11. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

12. *Counterparts.* If this Agreement is executed in multiple counterparts, all counterparts taken together will constitute this Agreement.

13. THE CONTRACT OF PURCHASE AND SALE FROM WHICH THIS SPECIAL WARRANTY DEED IS EXECUTED WAS THE RESULT OF AN ARMS-LENGTH AGREEMENT BETWEEN GRANTOR AND GRANTEE. THE PURCHASE PRICE OF THE PROPERTY WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION AND REFLECTED THE AGREEMENT OF GRANTOR AND GRANTEE. GRANTEE ACCEPTS THE PROPERTY IN ITS CURRENT PHYSICAL CONDITION "AS IS AND WITH ALL FAULTS". GRANTEE ACKNOWLEDGES THAT GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY, OTHER THAN WARRANTIES OF TITLE AS PROVIDED AND LIMITED HEREIN, INCLUDING (A) THE NATURE, QUALITY OR CONDITIONS OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, OR THE PRESENCE OR ABSENCE OF ANY POLLUTANT, HAZARDOUS WASTE, GAS OR SUBSTANCE OR SOLID WASTE ON OR ABOUT THE PROPERTY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY INTEND TO CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR BODY HAVING JURISDICTION, OR (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY.

[signatures on following pages]

Executed to be effective as of the Effective Date.

SELLER:

SOUTH 720, L.P.,
A Texas limited partnership

By: 
Name: J. Baxter Brinkmann
Title: General Partner

BUYER:

CITY OF MCKINNEY,
a Texas municipal corporation

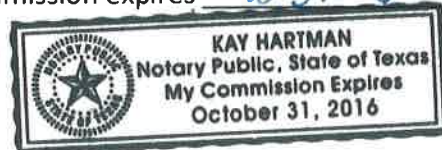
By: _____
Name: Tom Muehlenbeck
Title: Interim City Manager

THE STATE OF TEXAS
COUNTY OF COLLIN

This instrument was acknowledged before me on the 24 day of Sept, 2015, by J. BAXTER BRINKMANN, in his capacity as the General Partner of SOUTH 720, L.P., a Texas limited partnership, and that he executed the same on behalf of and as the act of the Limited Partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 24th DAY OF September, 2015.


Notary Public Dallas County, Texas
My commission expires 10-31-16



THE STATE OF TEXAS
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared TOM MUEHLENBECK, Interim City Manager of the **CITY OF MCKINNEY**, a Texas Municipal Corporation, known to me to be the person who's name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 2015.

Notary Public _____ County, Texas
My commission expires _____

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

PREPARED IN THE OFFICES OF:

BROWN & HOFMEISTER, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 Fax

EXHIBIT A

Description of the Land

Meter and Bounds Description: (Tract ONE - 0.491 Acres)

Being a tract of land, situated in the John McCorrah Survey, Abstract No. 372, in the City of McKinney, Collin County, Texas, and being a part of that called 27.931 acre tract of land described by deed to South 720, L.P., as recorded in Volume 4653, Page 2146, of the Deed Records, Collin County, Texas (D.R.C.C.T.), said tract being more particularly described as follows:

COMMENCING at a 1/2" iron rod with a plastic cap found for the southeasterly corner of a right-of-way dedication for Lake Forest Drive, shown in Exhibit B (0.2425 Acres), as described by deed recorded under Document No. 20100427000412530, of the Official Public Records, Collin County, Texas (O.P.R.C.C.T.), same also being the northeasterly corner of Exhibit A (0.4459 Acres), of said right-of-way document, said corner being in the easterly monumented line of Lake Forest Drive, said corner also being in the common line between said 27.931 acre tract and that called 52.177 acre tract, as described by deed to South 720, L.P., as recorded in Volume 4665, Page 1247, D.R.C.C.T.;

TRENCHE North 00°00'02" West, over and across said 27.931 acre tract, same being along the easterly monumented line of Lake Forest Drive, a distance of 33.51' to a 1/2" iron rod with a yellow plastic cap stamped "RPLS 5686" (herein after referred to as a capped iron rod set) for the POINT OF BEGINNING of the herein described property;

TRENCHE North 00°00'02" West, continuing along the easterly monumented line of Lake Forest Drive, same being over and across said 27.931 acre tract, a distance of 100.00' to a capped iron rod set;

TRENCHE over and across said 27.931 acre tract, the following courses and distances:

- South 45°00'03" East, a distance of 28.28' to a capped iron rod set;
- North 90°00'00" East, a distance of 330.00' to a capped iron rod set;
- South 00°00'00" East, a distance of 60.00' to a capped iron rod set;
- North 90°00'00" West, a distance of 330.00' to a capped iron rod set;
- South 44°59'59" West, a distance of 28.28' to the POINT OF BEGINNING and containing 0.491 acres of land, more or less.

Meter and Bounds Description: (Tract Two - 1.451 Acres)

Being a tract of land, situated in the John McCorrah Survey, Abstract No. 372, in the City of McKinney, Collin County, Texas, and being a part of that called 27.931 acre tract of land described by deed to South 720, L.P., as recorded in Volume 4653, Page 2146, of the Deed Records, Collin County, Texas (D.R.C.C.T.), said tract being more particularly described as follows:

COMMENCING at a 1/2" iron rod with a plastic cap found for the southeasterly corner of a right-of-way dedication for Lake Forest Drive, shown in Exhibit B (0.2425 Acres), as described by deed recorded under Document No. 20100427000412530, of the Official Public Records, Collin County, Texas (O.P.R.C.C.T.), same also being the northeasterly corner of Exhibit A (0.4459 Acres), of said right-of-way document, said corner being in the easterly monumented line of Lake Forest Drive, said corner also being in the common line between said 27.931 acre tract and that called 52.177 acre tract, as described by deed to South 720, L.P., as recorded in Volume 4665, Page 1247, D.R.C.C.T.;

TRENCHE North 00°00'02" West, over and across said 27.931 acre tract, same being along the easterly monumented line of Lake Forest Drive, a distance of 133.51' to a 1/2" iron rod with a yellow plastic cap stamped "RPLS 5686" (herein after referred to as a capped iron rod set) for the POINT OF BEGINNING of the herein described property;

TRENCHE North 00°00'02" West, continuing along the easterly monumented line of Lake Forest Drive, same being over and across said 27.931 acre tract, a distance of 168.44' to a 1/2" iron rod with a plastic cap found for the northeasterly corner of said 0.2425 acre tract, same being the southeasterly corner of Exhibit C (0.6279 Acres), of said right-of-way document, said corner also being in the common line between said 27.931 acre tract and that tract of land described by deed to Brinkmann Ranches of Collin County, L.P., as recorded in Volume 6067, Page 1320, D.R.C.C.T.;

TRENCHE South 88°15'26" East, along the common line between said Brinkmann Ranches of Collin County, L.P. tract and said 27.931 acre tract, a distance of 350.16' to a capped iron rod set for corner;

TRENCHE South 00°00'02" East, over and across said Brinkmann Ranches of Collin County, L.P. tract, a distance of 175.79' to a capped iron rod set;

TRENCHE North 90°00'00" West, continuing over and across said 27.931 acre tract, a distance of 330.00' to a capped iron rod set;

TRENCHE North 45°00'03" West, continuing over and across said 27.931 acre tract, a distance of 28.28' to the POINT OF BEGINNING and containing 1.451 acres of land, more or less.

[Exhibit A]

EXHIBIT B
Representations; Environmental Matters

A. Seller's Representations to Buyer

Seller represents to Buyer that, to Seller's current, actual knowledge, the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller has authority to convey the Land to Buyer. This Agreement is, and all documents required by this Agreement to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller.

2. *Litigation.* There is no litigation pending or threatened against Seller that might affect the Land or Seller's ability to perform its obligations under this Agreement.

3. *Violation of Laws.* Seller has not received notice of violation of any law, ordinance, regulation, or requirements affecting the Land or Seller's use of the Property.

4. *Licenses, Permits, and Approvals.* Seller has not received notice that any license, permit, or approval necessary to operate the Land in the manner in which it is currently operated will not be renewed on expiration or that any material condition will be imposed in order to obtain their renewal.

5. *No Liens.* On the Closing Date, the Land will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Land that might give rise to mechanic's, materialman's, or other liens against the Land other than work or materials to which Buyer has given its consent.

6. *No Other Representation.* Except as stated above Seller makes no representation with respect to the Land.

7. *No Warranty.* Seller has made no warranty in connection with this Agreement other than those warranties expressly provided for in the Agreement, (including the Exhibits thereto) the Deed or any related Easements.

8. *Disclosure of Environmental Conditions.* Seller has disclosed, in writing, to Buyer any and all known environmental conditions and contaminations relating to the Land known to Seller on or before the Closing Date. For purposes of this section an environmental condition or contamination shall be any condition on the Land which would be subject to reporting under CERCLA, 42 U.S.C. § 9601, *et. seq.*, and/or the presence of any EPCRA section 302 or 313 substances, and/or or CAA 112(r) listed substances.

[Exhibit B]