

LAND SWAP AGREEMENT

THIS LAND SWAP AGREEMENT (herein called this "Agreement"), is made this ____ day of _____, 2015, ("Effective Date") by and between WILLIAM D. ALLEN and CATHERINE K. ALLEN, husband and wife, whose mailing address is 140 Fort Florida Road, DeBary, FL 32713 (herein collectively referred to as "SELLER"), and the CITY OF DEBARY, a Florida municipal corporation, whose address is 16 Columba Road, DeBary, FL 32713 (hereinafter "CITY"). The SELLER and CITY are sometimes herein jointly referred to as the "Parties."

WHEREAS, SELLER is the fee simple owner of two contiguous parcels of land situated in Volusia County, Florida, with Volusia County Tax Parcel Identification numbers 9009-00-00-0060 ("Parcel One") and 9009-00-00-0070 ("Parcel Two") which are more particularly described on the attached **Exhibit "A"** (herein collectively "Discount Propane Property"); and

WHEREAS, the CITY has contracted to purchase that certain parcel of land with Volusia County Tax Parcel Identification number 9004-01-06-0211, which is more particularly described on the attached **Exhibit "B"** (herein "Benson Junction Property"); and

WHEREAS, the SELLER desires to convey to the CITY fee simple ownership of the Discount Propane Property in exchange for the CITY's conveyance to SELLER of fee simple ownership of the Benson Junction Property.

For and in consideration of the above recitals and provisions set forth in this Agreement, the receipt and sufficiency of which is acknowledged and agreed to by the parties, the Parties agree as follows:

I. AGREEMENT TO SELL AND PURCHASE; CONSIDERATION; CLOSING DATE

A. Recitals. The foregoing Recitals are true and correct and are incorporated herein as material provisions of this Agreement by this reference.

B. Agreement to Sell and Convey. SELLER hereby agrees to convey the Discount Propane Property to CITY in fee simple and CITY hereby agrees to accept conveyance of the Discount Propane Property from SELLER, subject to the terms, conditions and provisions hereinafter set forth.

C. Consideration to SELLER for Conveyance. In consideration of SELLER's conveyance of the Discount Propane Property to the CITY, simultaneously with the conveyance of the Discount Propane Property to the City, the CITY will convey the Benson Junction Property to the SELLER subject to the terms, conditions and restrictions hereinafter set forth, so that upon the execution and recording of the deeds contemplated by this Agreement, the CITY

will be the fee simple owner of the Discount Propane Property and SELLER will be the fee simple owner of the Benson Junction Property.

D. Closing. The Closing of the transactions contemplated by this Agreement shall occur on or before December 29, 2015, at the office of First American Title, 2567 S. Volusia Avenue, Suite 101, Orange City, FL 32763 (“First American”) or at such other place or by such other manner as the Parties mutually agree.

II. TITLE COMMITMENT, CONVEYANCE & INSURANCE

A. Discount Propane Title Commitment. CITY, at CITY’s expense, shall obtain, by or through First American as Title Agent within ten (10) days from the Effective Date of this Agreement, an A.L.T.A. Form B (Florida) title commitment for the Discount Propane Property for title insurance (the “Commitment A”) in the amount of \$350,000.00. The Discount Propane Property shall be free and clear of all liens, easements, restrictions and encumbrances except for easements and restrictions of record, which shall not, in CITY’s reasonable judgment, interfere with the CITY’s intended use of the Discount Propane Property (the “Permitted Exceptions”). In the event the Commitment A shows any exceptions to title, exclusive of the Permitted Exceptions, that are unacceptable to the CITY, the CITY shall notify SELLER of any objections in writing within three (3) days of CITY’s City Manager’s receipt of Commitment A specifying the defects which exist with respect to the title to the Discount Propane Property, and SELLER shall have a period of three (3) days after receipt of such written notice within which: (i) elect to cure any defects in title to the satisfaction of CITY; or (ii) notify CITY that it elects not to cure any defects. If SELLER elects by written notice to cure the defects in title, SELLER shall have until closing to cure such defects, at its expense. Upon SELLER’s election not to cure or failure to cure defects in title within the time limit aforesaid, the CITY may, at its option, either: (i) terminate this Agreement and upon such termination all rights and liabilities arising hereunder shall terminate; or (ii) waive its objections in this subsection II. A. and, subject to all the other terms and provisions of this Agreement, close this transaction in the same manner as if no such defect or defects had been found, provided however, that exceptions may be made to the title insurance policy for such uncured defects.

B. Benson Junction Property Title Commitment. CITY, at CITY’s expense, shall obtain, by or through First American as Title Agent within ten (10) days from the date of this Agreement, an A.L.T.A. Form B (Florida) title commitment concerning the Benson Junction Property for title insurance (the “Commitment B”) in the amount of \$350,000.00. The Benson Junction Property shall be free and clear of all liens, easements, restrictions and encumbrances except for easements and restrictions of record, which shall not, in SELLER’s reasonable judgment, interfere with the development of the Benson Junction Property (the “Permitted Exceptions”). In the event the Commitment B shows any exceptions to title, exclusive of the Permitted Exceptions, that are unacceptable to the SELLER, the SELLER shall notify CITY of

any objections in writing within three (3) days of SELLER's receipt of Commitment B specifying the defects which exist with respect to the title to the Benson Junction Property, and CITY shall have a period of three (3) days after receipt of such written notice within which: (i) elect to cure any defects in title to the satisfaction of SELLER; or (ii) notify SELLER that CITY elects not to cure any defects. If CITY elects by written notice to cure the defects in title, CITY shall have until closing to cure such defects, at its expense. Upon CITY's election not to cure or failure to cure defects in title within the time limit aforesaid, the SELLER may, at its option, either: (i) terminate this Agreement and upon such termination all rights and liabilities arising hereunder shall terminate; or (ii) waive all conditions in this subsection II B and, subject to all the other terms and provisions of this Agreement, close this transaction in the same manner as if no such defect or defects had been found, provided however, that exceptions may be made to the title insurance policy for such uncured defects.

C. Discount Propane Property Title. The Discount Propane Property shall be conveyed to CITY by SELLER by Special Warranty Deed and shall be free and clear of all liens, easements, restrictions and encumbrances except taxes and special assessments, if any, for the year of Closing and subsequent years, and the Permitted Exceptions as described subsection II. A. At closing, possession will be given to the CITY of Parcel Two of the Discount Propane Property. SELLER shall continue possession of Parcel One of the Discount Propane Property pursuant to that certain lease agreement (hereinafter the "Lease"), a copy of which is attached hereto as Exhibit "C", which the Parties shall execute at closing. A proration will be made as of the date of Closing for real estate taxes and special assessments and the prorated amount of such real property taxes and special assessments attributable to the SELLER shall be withheld from the Closing proceeds and escrowed in accordance with the provisions of Section 196.295, Florida Statutes; provided, however, that if the conveyance occurs between November 1 and December 31, then SELLER shall be responsible for real property taxes for the entire year. The CITY is exempt from real estate taxes and under no circumstances shall the CITY have any obligation for real estate taxes.

D. Benson Junction Property Title. The Benson Junction Property shall be conveyed to SELLER by CITY by Special Warranty Deed and shall be free and clear of all liens, easements, restrictions and encumbrances except taxes and special assessments, if any, for the year of Closing and subsequent years, and the Permitted Exceptions as described in subsection II. B. As closing, possession of the Benson Junction Property will be given to SELLER. A proration will be made as of the date of Closing for real estate taxes and special assessments; provided, however, that if the conveyance occurs between November 1 and December 31, then CITY shall be responsible for real property taxes for the entire year.

E. Title Insurance. An Owner's Policy of Title Insurance to be issued pursuant to the Commitment A is to be purchased and issued to CITY at CITY's expense after Closing. An Owner's Policy of Title Insurance to be issued pursuant to the Commitment B is to be purchased

by the CITY and issued to SELLER at the CITY's expense after Closing. This subsection II. F. shall survive Closing.

F. Benson Junction Purchase. The CITY has contracted to purchase the Benson Junction Property, which transaction is scheduled to close on or about December 29, 2015. If the CITY is unable to close on the purchase of the Benson Junction Property on or before December 29, 2015, either Party may terminate this Agreement by providing written notice to the other Party.

G. Further Assurances. At or subsequent to Closing, SELLER and CITY will, without additional consideration, sign, acknowledge, and deliver a further assurances agreement and any other documents and take any other action necessary or appropriate, as reasonably requested by the SELLER, CITY or the Closing Agent, to carry out the intent and purpose of this Agreement, including for the issuance of title insurance.

III. CLOSING COSTS

SELLER shall pay for the cost of recording any corrective instruments concerning the Discount Propane Property, SELLER's attorney's fees, costs for clearing encumbrances and curing title defects and costs for satisfying mortgages and liens on the Discount Propane Property conveyed. The CITY shall pay documentary stamp tax on the deeds and costs for the title commitments and the title insurance policies, recording costs associated with the special warranty deeds and Closing document preparation concerning the conveyance of both the Discount Propane Property and the Benson Junction Property.

IV. AS-IS SALE

Except for warranties of title and other warranties specified in Sections V and VI of this Agreement, the Discount Propane Property and Benson Junction Property are being conveyed "as-is" without representations and warranties (express or implied), including without limitation, concerning the condition of such properties and suitability for the respective intended uses. Given the nature of this transaction, in the event certain statutory disclosures or any other disclosures required by law were not made to the SELLER and/or the CITY herein, the SELLER and CITY each for themselves and for their successors and assigns, hereby waive any and all statutorily required disclosures, and release each other from any and all claims or right to terminate this Agreement on the basis that such disclosures have not or were not made.

V. SELLER'S WARRANTIES

The representations and warranties set forth below are limited to SELLER's actual knowledge:

A. SELLER warrants that SELLER is in sole constructive or actual possession of the Discount Propane Property and SELLER has no actual knowledge of another person having any

right to possession of the Discount Propane Property, or asserts any claim of title or other interests in it. SELLER warrants that the Discount Propane Property is not the homestead of SELLER.

B. SELLER has no actual knowledge of any outstanding contracts for the sale of the Discount Propane Property to any person or persons whomsoever except for the CITY, nor any unrecorded deed, mortgage, lease or other conveyances affecting the title to the Discount Propane Property.

C. SELLER has no actual knowledge of any assessments that are now liens on the Discount Propane Property. SELLER has no actual knowledge of any judgments, claims, disputes, demands or other matters pending against SELLER that could attach to the Discount Propane Property or affect title to the Discount Propane Property or any part thereof, or does or could prohibit or make unlawful the consummation of this transaction, or render the SELLER unable to consummate this transaction.

D. SELLER warrants that there have been no improvements made upon the Discount Propane Property within the past ninety (90) days for which there remain any outstanding and unpaid bills for labor, materials or supplies for which a lien or liens might be claimed by anyone.

E. SELLER warrants that the undersigned person(s) signing for SELLER have full authority to bind SELLER to this Agreement and to convey the Discount Propane Property to the CITY and to accept conveyance of the Benson Junction Property from the CITY.

F. Neither SELLER nor, any third party, has used, generated, manufactured, stored or disposed of any Hazardous Substance (as defined hereinafter) in, at, on, under or about the Discount Propane Property or transported any Hazardous Substance to or from the Discount Propane Property. Furthermore: (a) the Discount Propane Property is not in violation, nor has been or is currently under investigation for violation of any federal, state or local law, ordinance, permit or regulation relating to industrial hygiene, worker health and safety, or to the environmental conditions in, at, on, under or about the Discount Propane Property including, but not limited to, soil and groundwater conditions; (b) the Discount Propane Property has not been subject to, and is not within 2,000 feet of, a deposit of any Hazardous Substance; (c) there has been no discharge, migration or release of any Hazardous Substance from, into, on, under or about the Discount Propane Property; and (d) there is not now, nor has there ever been on or in the Discount Propane Property underground storage tanks or surface or below-grade impoundments, any asbestos-containing materials or any polychlorinated biphenyls used in hydraulic oils, electrical transformers or other equipment.

“Hazardous Substances” shall mean and include all hazardous or toxic substances, wastes or materials, and all pollutants and contaminants, including but not limited to those elements or compounds which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (“EPA”) and the list of toxic pollutants designated by Congress or the EPA or defined by any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability

(including strict liability) or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or any time hereinafter in effect.

G. It is a Closing condition that representations and warranties of the SELLER contained in this Agreement will be true on and as of the Closing date with the same effect as though those representations and warranties have been made on and as of that date. Further, in consideration of this Agreement, the SELLER shall, and does hereby agree to defend, indemnify, save and hold harmless the CITY from and against any all claims, suits, actions, damages, judgments, liabilities and expenses in connection with or arising out of any or all of the aforesaid warranties and representations. SELLER shall execute an affidavit at Closing agreeing that the warranties herein are true on and as of the Closing date and that such warranties survive Closing.

VI. CITY'S WARRANTIES

The representations and warranties set forth below are limited to CITY's actual knowledge:

A. CITY warrants that CITY has contracted to purchase the Benson Junction Property. The CITY understands that the owner of the Benson Junction Property is in sole constructive or actual possession of the Benson Junction Property and CITY has no actual knowledge of another person having any right to possession of the Benson Junction Property, or asserts any claim of title or other interests in it. CITY warrants that the Benson Junction Property is not the homestead of CITY.

B. CITY has no actual knowledge of any outstanding contracts for the sale of the Benson Junction Property to any person or persons whomsoever except for the CITY'S contract referenced above and this agreement with SELLER, nor any unrecorded deed, mortgage, lease or other conveyances affecting the title to the Benson Junction Property.

C. CITY has no actual knowledge of any assessments that are now liens on the Benson Junction Property. CITY has no actual knowledge of any judgments, claims, disputes, demands or other matters pending against CITY that could attach to the Benson Junction Property or affect title to the Benson Junction Property or any part thereof, or does or could prohibit or make unlawful the consummation of this transaction, or render the CITY unable to consummate this transaction.

D. CITY warrants that there have been no improvements made upon the Benson Junction Property within the past ninety (90) days for which there remain any outstanding and unpaid bills for labor, materials or supplies for which a lien or liens might be claimed by anyone.

E. CITY warrants that the undersigned person(s) signing for CITY has full authority to bind CITY to this Agreement and to convey the Benson Junction Property to the SELLER and to accept conveyance of the Discount Propane Property from the SELLER.

F. Neither CITY nor, any third party, has used, generated, manufactured, stored or disposed of any Hazardous Substance (as defined hereinafter) in, at, on, under or about the Benson Junction Property or transported any Hazardous Substance to or from the Benson Junction Property. Furthermore: (a) the Benson Junction Property is not in violation, nor has been or is currently under investigation for violation of any federal, state or local law, ordinance, permit or regulation relating to industrial hygiene, worker health and safety, or to the environmental conditions in, at, on, under or about the Benson Junction Property including, but not limited to, soil and groundwater conditions; (b) the Benson Junction Property has not been subject to, and is not within 2,000 feet of, a deposit of any Hazardous Substance; (c) there has been no discharge, migration or release of any Hazardous Substance from, into, on, under or about the Benson Junction Property; and (d) there is not now, nor has there ever been on or in the Benson Junction Property underground storage tanks or surface or below-grade impoundments, any asbestos-containing materials or any polychlorinated biphenyls used in hydraulic oils, electrical transformers or other equipment.

“Hazardous Substances” shall mean and include all hazardous or toxic substances, wastes or materials, and all pollutants and contaminants, including but not limited to those elements or compounds which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (“EPA”) and the list of toxic pollutants designated by Congress or the EPA or defined by any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability (including strict liability) or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or any time hereinafter in effect.

G. It is a Closing condition that representations and warranties of the CITY contained in this Agreement will be true on and as of the Closing date with the same effect as though those representations and warranties have been made on and as of that date. Further, in consideration of this Agreement, the CITY shall, and does hereby agree to defend, indemnify, save and hold harmless the SELLER from and against any all claims, suits, actions, damages, judgments, liabilities and expenses in connection with or arising out of any or all of the aforesaid warranties and representations. CITY shall execute an affidavit at Closing agreeing that the warranties herein are true on and as of the Closing date and that such warranties survive Closing.

VII. OTHER AGREEMENTS

No prior or present agreements or representations shall be binding upon any of the Parties hereto unless incorporated in this Agreement. No modification or change in this Agreement shall be valid or binding upon the Parties unless in writing, executed by the Parties to be bound thereby. Typewritten or handwritten provisions inserted herein or attached hereto as Addenda, and initialed by all Parties, shall control all printed provisions in conflict therewith.

VII. RADON GAS / MOLD

Radon is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time.

Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. Pursuant to § 404.056 Florida Statutes.

Mold is naturally occurring and may cause health risks or damage of property. If either party is concerned or desires additional information regarding mold, such party should contact an appropriate professional.

IX. NOTICE

Any notice or demand to be given or that may be given hereunder shall be in writing and shall be (i) delivered through hand delivery, or (ii) delivered through Federal Express, UPS, or other expedited mail or package service, addressed to the Parties at the address shown below. Any notice or demand that may be given hereunder shall be deemed complete (i) upon confirmed delivery if hand delivery, or (ii) upon confirmation of delivery if deposited with Federal Express, UPS, or other expedited mail with package delivery to the appropriate address as herein provided. Any party hereto may change said address by notice in writing to the other Parties in the manner herein provided. All notices shall be sent to SELLER and the CITY as the following addresses:

CITY: Dan Parrott, City Manager
City of DeBary
16 Columba Road
DeBary, Florida 32713
Telephone: (386) 668-2040 Ext. 304

With a copy to: A. Kurt Ardaman, City Attorney
Fishback Dominick
1947 Lee Road
Winter Park, Florida 32789
Telephone: (407) 262-8400

SELLER: William D. Allen
Catherine K. Allen
140 Fort Florida Road
DeBary, Florida 32713
Telephone: (407) 416-4327

X. ESCROW / CLOSING AGENT

SELLER and CITY agree that Fishback Law Firm shall serve as counsel to CITY and First American as the Escrow Agent, Title Agent and Closing Agent, and in the event of any

dispute, conflict or lawsuit, either between SELLER, CITY or Escrow Agent or any combination thereof, SELLER agrees that the Fishback Law Firm may serve as attorneys for CITY in this transaction and in any dispute concerning or arising from this Agreement. Further, in the event of any dispute, conflict or lawsuit, involving any deposit, or this Agreement or the transaction or obligations or rights under this Agreement, the Escrow Agent may interplead the disputed funds or documents with the Clerk of the Circuit Court. SELLER and CITY shall each pay Escrow Agent attorneys' fees and costs related to any dispute, conflict and litigation relating to this Agreement, or the transaction, or obligations or rights provided in this Agreement. Further, CITY and SELLER each indemnify and hold harmless the Escrow Agent from all losses, damages, claims, disputes, lawsuits, interests, and other adverse matters caused by Escrow Agent excluding gross negligence and intentional misappropriation by Escrow Agent. Monies held by Escrow Agent under this Agreement, if any, shall be placed in a non-interest bearing account. This Section X survives termination of this Agreement and Closing.

XI. BROKERS

This Agreement was not brought about, directly or indirectly, by any real estate agency or broker and no commission or fee will be payable on the sale hereunder. SELLER shall and hereby indemnifies CITY against and holds CITY harmless from all liabilities, costs, damages and expenses (including reasonable attorneys fees), arising from any claims for commissions or other similar fees in connection with the transactions covered by this Agreement, based upon alleged arrangements or agreements made by SELLER. CITY shall and hereby indemnifies SELLER against and holds SELLER harmless from all liabilities, costs, damages and expenses (including reasonable attorneys fees), arising from any claims for commissions or other similar fees in connection with the transactions covered by this Agreement, based upon alleged arrangements or agreements made by CITY. This Section XI survives termination of this Agreement and Closing.

XII. DEFAULT

If the CITY fails to perform any of the covenants of this Agreement, SELLER shall as its sole remedy: (i) have the right to terminate this Agreement; or (ii) seek specific performance of this Agreement. SELLER waives monetary damages in the event of breach or default of CITY. If SELLER fails to perform any of the covenants of this Agreement, CITY shall: (i) have the right to terminate this Agreement; or (ii) seek specific performance of this Agreement.

XIII. DISPUTES

1. Mediation. Any disputes, claims or counterclaims between CITY and SELLER arising out of or in connection with this Agreement which cannot be amicably resolved by the Parties through good faith negotiations shall first be submitted to nonbinding mediation

for resolution. As a condition precedent to the filing of any suit or other legal proceeding, the Parties shall endeavor to resolve claims, disputes or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The Parties shall, by mutual agreement, select a mediator within twenty (20) days of the date of the request for mediation. If the Parties cannot agree on the selection of a mediator, then the CITY shall select the mediator who, if selected solely by the CITY, shall be a mediator certified by the Supreme Court of Florida. No suit or other legal proceeding shall be filed until (i) the mediator declares an impasse, which declaration, in any event, shall be issued by the mediator not later than sixty (60) days after the initial mediation conference; or (ii) sixty (60) days has elapsed since the written mediation request was made in the event the other party refuses to or has not committed to attend mediation; provided however, a lawsuit may be filed prior to the satisfaction of the mediation requirement in order to preserve a claim that will elapse due to an immediate forthcoming expiration of an applicable statute of limitation. In the event a lawsuit is filed prior to the completion of the mediation requirement, the lawsuit shall be abated upon motion of either party until such time as the mediation requirement has been satisfied. The Parties shall share the mediator's fee equally. The mediation shall be held in Volusia County, Florida, unless another location is mutually agreed upon by the Parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

2. Laws/Venue. All of the terms and conditions stated herein shall be construed under the laws of the State of Florida. Exclusive venue for any lawsuits filed relating to or arising from this Agreement shall be in a court of proper jurisdiction in Volusia County, Florida.

3. Attorneys' Fees. The prevailing party in any lawsuit filed concerning the breach of this Agreement shall be entitled to reimbursement of reasonable attorney's fees, experts' fees and other litigation costs incurred in such lawsuit against the non-prevailing party.

XIV. SITE PLAN REVIEW

SELLER intends to move its propane business operation to the Benson Junction Property and will be seeking site plan approval for said property. The CITY agrees to pay or otherwise waive one-half of the development review fees imposed by the CITY for the proposed development. In addition, the CITY staff will recommend approval of SELLER's application to completely clear the property of all trees and vegetation without the requirement tree replacement.

XV. INSPECTION PERIOD

SELLER and the CITY shall each have until 5:00 p.m. EST on December 28, 2015 (“**Inspection Period**”) to evaluate all matters deemed relevant with respect to the respective property each is receiving under this Agreement, and to determine, in their sole and absolute discretion, whether the property is suitable and satisfactory to them. Each shall have the absolute and unconditional right to terminate this Agreement during the Inspection Period. If either

notifies the other in writing prior to expiration of the Inspection Period that the respective property is not suitable, then, this Agreement shall automatically terminate, and the parties shall be relieved of all further obligations and liabilities under this Agreement except only those which expressly survive the termination of this Agreement.

XVI. ENTRY

From the Effective Date through Closing, each Party hereby grants to the other and their agents, consultants, engineers or assigns, the full right of entry upon the respective property as needed to inspect, examine and otherwise undertake those actions which the respective Party, in its discretion and its sole cost and expense, deems necessary or desirable to determine the suitability of the respective property; including without limitation, the right to perform soil tests, borings, percolation tests, compaction tests, environmental tests, surveys and tests to obtain any other information relating to the surface, subsurface and topographic conditions of the property. Since the CITY is not the current owner of the Benson Junction Property, SELLER'S access and entry upon the Benson Junction Property shall be coordinated through representatives of the CITY. Each Party shall promptly restore any physical damage such Party caused to the property by the aforesaid inspections, tests and other activities, and each Party shall indemnify and hold the other harmless from and against any suits, claims, damages, costs, expenses and liabilities asserted against or incurred as a result of the exercise by the Party of its rights under this section.

XVII. MISCELLANEOUS

Time is of the essence in this Agreement. All covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, trustees, successors and assigns of the respective parties. In the event any date or time period in this Agreement falls on a Saturday, Sunday or legal holiday recognized by the State of Florida, the date or time period shall be extended to the next business day. Nothing herein shall constitute a waiver of or be deemed a waiver of the CITY's sovereign immunity protections. Nothing herein shall constitute or be deemed a waiver or limitation of CITY's home rule and police power authority. The effectiveness of this Agreement is subject to City of DeBary City Commission approval. If the date on the first page of this Agreement designated Effective Date is blank, the Effective Date of this Agreement shall be upon the date of the last of the Parties to execute this Agreement and after City Commission approval. Electronic and/or facsimile signatures to this Agreement shall be deemed original signatures. This Agreement may be executed in any number of counterparts, the aggregate of which shall constitute a single document. The conveyances from CITY to SELLER and SELLER to CITY contemplated by this Agreement are not severable.

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF, the SELLER and the CITY have hereunto set their hands and seals the day and year above written.

Signed, sealed and delivered in the presence of:

“CITY”

“SELLER”

CITY OF DEBARY

William D. Allen

, City Manager

Catherine K. Allen

Exhibit "A"
Discount Propane Property

Parcel One

Parcel # 09-19-30-00-00-0060

A PORTION OF THE NORTHWEST ¼ OF NORTHEAST ¼ OF SECTION 9, TOWNSHIP 19 SOUTH, RANGE 30 EAST, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 355.4 FEET EAST AND 521.7 FEET SOUTH OF NORTHWEST CORNER OF NORTHWEST ¼ OF NORTHEAST ¼ OF SAID SECTION 9, TOWNSHIP 19 SOUTH, RANGE 30 EAST; RUN THENCE WEST 330.5 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF THE ATLANTIC COAST LINE RAILROAD; THENCE SOUTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE 223.95 FEET TO A POINT; THENCE EAST 300.75 FEET TO A POINT; THENCE NORTH 221.3 FEET TO THE PLACE OF BEGINNING, EXCEPT THE EAST 15 FEET THEREOF FOR PRIVATE ROAD; TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THE EAST 15 FEET OF THE NORTH 743 FEET OF SAID NORTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 9, TOWNSHIP SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA.

Parcel Two

Parcel # 09-19-30-00-00-0070

A PORTION OF THE NORTHWEST ¼ OF NORTHEAST ¼ OF SECTION 9, TOWNSHIP 19 SOUTH, RANGE 30 EAST, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 355.4 FEET EAST AND 300 FEET SOUTH OF THE NORTHWEST CORNER OF THE NORTHEAST ¼ OF SECTION 9, TOWNSHIP 19 SOUTH, RANGE 30 EAST, RUN THENCE SOUTH 221.7 FEET TO A POINT, THENCE WEST 330.5 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF THE ATLANTIC COAST LINE RAILROAD, THENCE NORTHWESTERLY ALONG SAID EASTERLY RIGHT OF WAY LINE 114.3 FEET TO A POINT ON THE WEST LINE OF SAID NORTHEAST ¼, THENCE NORTH 108.8 FEET TO A POINT, THENCE EASTERLY 355.4 FEET TO POINT OF BEGINNING. LESS THE EAST 15 FEET FOR THE PRIVATE ROAD, TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THE EAST 15 FEET OF THE NORTH 743 FEET OF SAID NORTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 9, TOWNSHIP 19 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA.

Exhibit "B"
Benson Junction Property

Parcel # 04-19-30-01-06-0211

Commencing at a point on the South line of Block 6, VOLUSIA PARK, according to the plat thereof as recorded in Map Book 22, Page 34, of the Public Records of Volusia County, Florida, said point being 7.00 feet S 88°38'37" E of the Southeast Corner of Lot 21, said Block 6; thence run N 88°38'37" W, along the South line of said Block 6 and the South line of Block 7, said Volusia Park, a distance of 478.00 feet for a POINT OF BEGINNING; thence continue N 88°38'37" W, along the said South line and along the South line of Block 8, said Volusia Park, 347.02 feet to a point 25.00 feet N 88°38'37" W of the Southwest corner of Lot 21, Block 8, thence run N 01°43'49" E 599.60 feet to a point on the North line of said Block 8, said point being 25.00 feet N 88°38'05" W of the Northwest Corner of Lot 40, said Block 8; thence run S 88°38'05" E, along the North line of said Blocks 8 and 7, a distance of 465.47 feet; thence run S 12°53'31" W 611.88 feet to the Point of Beginning.

EXHIBIT "C"

LEASE

THIS LEASE executed this ____ day of December 2015, by and between the CITY OF DEBARY, a Florida municipal corporation, hereinafter referred to as "Lessor," and WILLIAM D. ALLEN and CATHERINE K. ALLEN, husband and wife, hereinafter referred to as "Lessee,"

WITNESSETH:

Pursuant to that certain Land Swap Agreement, Lessor conveyed certain property known as the Benson Junction Property to Lessee and Lesser conveyed certain property known as the Discount Propane Property to Lessor.

Prior to said conveyances, Lessee had been operating a propane business on a portion of the Discount Propane Property more particularly described on the attached Exhibit "A" (hereinafter the "Demised Premises").

Pursuant to the Land Swap Agreement, Lessor has agreed to lease and Lessee has agreed to take from the Lessor the Demised Premises under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the Ten Dollars and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor does hereby lease to Lessee and Lessee does hereby take from the Lessor the Demised Premises upon the terms and conditions set forth herein.

1. **TERM:** The term of this Lease shall be for a period of eighteen months, beginning on the 29th day of December, 2015, and extending to and including the 29th day of June, 2017, unless sooner terminated as hereinafter provided.

2. **RENT:** The total base rent for the original term of this Lease is \$15.00 payable upon execution of the lease, plus Florida sales tax thereon. In addition to payment of the above rental amount, Lessee's occupancy of the Demised Premises is conditioned upon Lessee diligently pursuing the necessary approvals to allow Lessee to occupy and operate Lessee's propane business on the site Lessee acquired from Lessor at 450 S. Shell Road, DeBary, Florida.

3. **TAXES AND ASSESSMENTS:** Lessee shall promptly pay all general real estate taxes and all installments of special assessments upon the Demised Premises and all personal property located thereon by the Lessee that become due and payable during the term of this Lease. In addition, Lessee shall pay Lessor any sales or use tax thereon.

4. **INSURANCE:** From the date of the commencement of this Lease and any extensions thereof, Lessee shall maintain public liability insurance covering the Demised Premises for the protection of Lessor and Lessee as their interests may appear, with limits of not

less than \$1,000,000.00 for death or injury to any one person, \$2,000,000.00 for death or injury to more than one person, and \$1,000,000.00 for property damage. Lessee shall promptly, upon execution of this Lease, provide Lessor with a certificate or certificates from the insurer evidencing that such insurance is in force, that Lessor and Lessee are covered by such policy or policies as their interests may appear, and that such policy or policies are noncancellable without at least fifteen days advance notice to Lessor, and, in the event that Lessee fails to furnish said certificates to Lessor, this Lease shall be terminable at Lessor's option.

5. UTILITIES: Lessee shall pay promptly as and when the same becomes due and payable all rents, rates and charges for water, sewer, electricity, gas, fuel, lights, heat and power and other utilities supplied to the Demised Premises or used by Lessee in connection therewith. In the event Lessee does not pay, Lessor reserves the right to pay said utilities in order to conserve its property and to charge the cost back against Lessee.

6. USE OF DEMISED PROPERTY: Lessee may use the Demised Premises for the purpose of operating a propane business thereon and related activities and for no other purpose without the written consent of Lessor, which consent shall not be unreasonably withheld. Lessee further agrees that it will not use or permit the Demised Premises to be used for any illegal or improper purpose, nor permit any disturbance, noise or annoyance whatsoever, as will interfere with, annoy, or disturb any other tenants of the property or Lessor in Lessor's management of the property.

7. COMPLIANCE WITH LAWS: Lessee, at its own expense, shall fully comply with and obey all laws, ordinances, rules, regulations and requirements of all regularly constituted authorities, in any way affecting the Demised Premises or the use thereof, or this Lease.

8. CONDITION OF PROPERTY: Lessee covenants that it has inspected the Demised Premises and accepts it in its present condition. Lessee agrees to make all necessary repairs to the Demised Premises at its own expense.

9. MAINTENANCE: Lessee shall be responsible for all maintenance and repairs on the Demised Premises and shall maintain the Demised Premises and all improvements thereto and equipment thereon, if any, in their present condition, reasonable wear and tear accepted. Lessee shall keep the interior and exterior of the the buildings on the Demised Premises free from obnoxious odors, vermin, rubbish, debris or other foreign matter.

10. ALTERATIONS: Lessee shall make no additions, alterations or structural changes to the buildings or other structures on the Demised Premises without the prior written consent of Lessor. Lessee agrees that any and all permanent improvements made to the Demised Premises are to become the property of Lessor if Lessor so desires.

11. TRADE AND OTHER FIXTURES: All equipment and trade fixtures which are installed or placed on the Demised Premises by or at the expense of the Lessee, shall remain the property of the Lessee and Lessee shall have the right to remove the same at any time when it is not in default of any of its agreements herein contained, provided that such removal may be accomplished without damage to the Demised Premises.

12. LOSS OF CONTENTS: Lessee hereby waives any and all right of recovery from Lessor for any loss or damage to the Demised Premises or to any of the goods or contents located thereon, whether owned by Lessee or Lessor, occasioned by any cause whatsoever, including but not limited to the perils of fire and other perils included in the definition of extended coverage.

13. DAMAGE OR DESTRUCTION OF PREMISES: In the event that the buildings or other structures shall be destroyed or damaged by fire or other casualty during the term of this Lease so that the same shall be unfit, in whole or in part, for the occupancy thereof by Lessee, Lessee shall have the option of either terminating its obligations under this Lease, or rebuilding and repairing said structures to substantially the same condition as they were prior to the damage, applying the proceeds of insurance provided by Lessee against the costs thereof. Lessee shall furnish Lessor notice in writing of its election under this option within thirty days of the date of the damage or destruction. In the event Lessee elects to restore or rebuild said structures, such work shall be completed within ninety days from the date of the damage with no abatement of the rent payable under this Lease during the aforesaid.

14. LIABILITY FOR CASUALTY: Should any damage occur to the Demised Premises, or any part thereof, or to the structure thereon, during the term of this Lease or any extension thereof, from fire or breach of a covenant herein or other causes due to any act or failure to act by Lessee or its employees, visitors or anyone acting for Lessee, then Lessee shall be liable to Lessor for said damages and Lessee shall hold Lessor harmless from all claims and/or suits for personal injury or property damage.

15. INDEMNITY FROM LIABILITY: Lessee shall save and hold Lessor harmless from all liabilities, charges, expenses (including attorneys' fees), and costs on account of all claims for damages and/or suits for or by reason of any injury or injuries to any person or property of any kind whatsoever, whether to the person or property of Lessee, its agents or employees or third persons, from any cause or causes whatsoever, while in or upon or in proximity to the Demised Premises or any part thereof, occasioned by the occupancy, use or failure to maintain the Demised Premises or due to any breach of a covenant herein by Lessee.

16. LESSEE SHALL NOT CAUSE LIENS. Nothing in this Lease shall grant or confer unto Lessee the right to lien, mortgage or encumber in any way the real property of Lessor or any improvements thereon nor subject such property to any encumbrance; Lessee has no right whatsoever to lien, mortgage or encumber the real property of Lessor, or the improvements thereon. Lessee alone shall be liable and responsible for labor or materials furnished for the

Demised Premises by order of the Lessee or its agents or subcontractors, and Mechanic's Liens or Construction Liens are expressly prohibited under this Lease.

17. INDEMNITY FROM LIENS: Lessee assumes full responsibility for, and agrees to indemnify and hold Lessor harmless from and against, the payment and satisfaction of any and all claims as aforesaid. If any such lien attaches, or claim of lien is made against the Demised Premises and shall not be released by payment, bond or otherwise, within thirty days after notice thereof, Lessor shall have the right to terminate this Lease, or to pay or discharge the claim, and Lessee agrees to reimburse Lessor for such payment promptly upon demand. Nothing herein shall deny Lessee the right to contest the correctness or validity of any such lien or claim, but Lessee shall take such action as may be necessary to prevent foreclosure of any such lien or claim.

18. CONDEMNATION: In the event that a portion of the Leased Premises is acquired by or for an entity possessing eminent domain power, by the exercise of such power or under threat of condemnation, whether such acquisition is by gift, contract, lawsuit or otherwise, the Lessor shall be entitled to and shall receive all damages, compensation, awards and benefits in any way relating to the Demised Premises or project for which the acquisition occurs, and the Lessee shall have no right to any such damage, compensation, award or benefit regardless of whether the Lease continues or terminates. However, in the event of a partial acquisition of the Demised Premises, Lessee may seek to recover business damages from the condemning authority. This paragraph shall survive termination and expiration of this Lease.

This Lease shall terminate upon acquisition of all of the Lessor's interest in the Leased Premises by or for an entity with eminent domain power. In the event of a partial acquisition of the Demised Premises by an entity with the power of eminent domain which acquisition includes more than 25% of the floor area of any building located upon the Demised Premises, the Lessee shall have the right to terminate this Lease if Lessee cannot continue Lessee's business on the Demised Premises due to the acquisition. To the extent all or any portion of the Leased Premises is acquired by an entity with the power of eminent domain, Lessor's obligations to the Lessee with respect to that part of the Leased Premises so acquired which obligations are set forth in this Lease shall terminate. Lessee shall have no obligation to defend against an acquisition by a condemning authority. Lessor shall have the sole and exclusive right to hire any and all attorneys, consultants, experts and others to represent Lessor's interests under this Lease and Lessee shall only have the right to hire its attorneys and others for Lessee's business damages only.

19. INSPECTIONS: Lessee shall permit Lessor and the agents of Lessor to enter upon the Demised Premises at all reasonable times to examine the condition thereof or make such repairs, additions or alterations therein as Lessor may deem necessary, or to exhibit the same to prospective tenants, purchasers or other persons.

20. TERMINATION: Lessee shall surrender and deliver up the Demised Premises at the end of the lease term in as good order and condition as the same are now or may be put by Lessor, reasonable use and natural wear and tear or unavoidable casualty excepted. Lessee shall, at such time, upon Lessor's request, remove any internal or external walls, partitions, signs, fixtures or other items placed in or on or installed in the Demised Premises by Lessee. Provided, however, that if said rent, or any part thereof, shall at any time be in arrears and unpaid, with or without any demand being made therefor, or if Lessee shall fail to keep and perform and observe any of the covenants, agreements or conditions of this Lease on the part of Lessee to be kept, performed and observed, or if Lessee shall be adjudged a bankrupt, or shall make an assignment for creditors, or if the interest of Lessee herein shall be sold under execution or other legal process, it shall be lawful for Lessor, its successors and assigns, at their option, to terminate this Lease or to enter into Demised Premises and again have, repossess and enjoy the same without prejudice to the rights of Lessor hereunder. In case of such default and entry by Lessor, Lessor may relet Demised Premises for the remainder of said term for the highest rent obtainable, and may recover from Lessee any deficiency between the amount thus obtained and the amount hereinabove reserved. Such reentry shall not deprive Lessor of any other action or remedy against Lessee for possession, rent (accrued or to accrue) or damages, nor constitute a waiver of any lien of Lessor on the property of Lessee.

21. PERFORMANCE ON BEHALF OF LESSEE: In the event of failure of Lessee to promptly comply with any of Lessee's obligations, Lessor may, at its option, at any time thereafter, perform such obligations of Lessee and any expense incurred thereunder shall be deemed additional rent and shall be paid by Lessee to Lessor within ten days after receipt of written notice thereof.

22. WAIVER: No waiver by Lessor of any default or breach or series of breaches of any covenant, agreement or condition of this Lease shall be construed to be a waiver of the rights of Lessor as to any future default or breach by Lessee.

23. REMEDIES: The remedies available to the parties under the terms of this Lease and in law or equity shall be cumulative, and the exercise of any remedy shall not constitute an election of remedies.

24. HOLDING OVER: Should Lessee, with or without the express or implied consent of Lessor, continue to hold and occupy said Demised Premises after the expiration of the terms of this Lease, such holding over beyond the terms, and the acceptance or collection of rent by Lessor, shall operate and be construed as creating a tenancy from month to month, and not for any other term whatsoever, but the same may be terminated by Lessor by giving Lessee fifteen days written notice thereof, and at any time thereafter Lessor may reenter and take possession of said premises, any rule in law or equity to the contrary notwithstanding.

25. COSTS: In the event that Lessee fails to make any payments provided for herein, or breaches this agreement in any respect, Lessee shall be obligated to Lessor for costs, legal expenses, and attorneys' fees incurred in the enforcement of such rights hereunder, whether or not a lawsuit is actually filed in connection with such enforcement.

26. ASSIGNMENT AND SUBLETTING: Lessee shall not assign or transfer this Lease, nor sublet any portion of the Demised Premises without the prior written consent of Lessor.

27. CONTINUATION OF TERMS: It is agreed by and between the parties hereto that all of the terms and conditions applying during the initial term of this Lease shall also apply to any extension of this Lease, unless the parties hereto enter into another written agreement.

28. RECORDATION: Neither this Lease nor any notice thereof shall be recorded in any public records.

29. NOTICE : Any notice or demand to be given or that may be given hereunder shall be in writing and shall be (i) delivered through hand delivery , or (ii) delivered through Federal Express, UPS, or other expedited mail or package service, addressed to the Parties at the address shown below. Any notice or demand that may be given hereunder shall be deemed complete (i) upon confirmed delivery if hand delivery, or (ii) upon confirmation of delivery if deposited with Federal Express, UPS, or other expedited mail with package delivery to the appropriate address as herein provided. Any party hereto may change said address by notice in writing to the other Parties in the manner herein provided. All notices shall be sent to Lessor and Lessee as the following addresses:

Lessor: Dan Parrott, City Manager
City of DeBary
16 Columba Road
DeBary, Florida 32713
Telephone: (386) 668-2040 Ext. 304

With a copy to: A. Kurt Ardaman, City Attorney
Fishback Dominick
1947 Lee Road
Winter Park, Florida 32789
Telephone: (407) 262-8400

Lessee: William D. Allen
Catherine K. Allen
140 Fort Florida Road
DeBary, Florida 32713
Telephone: (407) 416-4327

30. GOVERNING LAW: This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of Florida.

31. RIGHTS OF THE PARTIES: Each and every provision of this Lease shall bind and inure to the benefit of the parties hereto, their legal representatives, heirs, successors and assigns. Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural for the singular number in any place or places herein in which the context may require the same.

32. TIME OF ESSENCE: It is understood and agreed between the parties hereto that time is of the essence of this Lease and this applies to all terms and conditions contained herein.

33. RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Health Department. This notice is given in accordance with the requirements of Section 404.056 of the Florida Statutes.

34. HAZARDOUS WASTE: Lessee herein shall throughout the term of this Lease, at its sole expense, promptly comply with all present and future laws and regulations of all departments, boards and officers, and all orders and regulations of all federal, state, and municipal governments, courts, commissions, departments, boards and officers, and all orders and regulations of any other body exercising similar functions, foreseen or unforeseen, ordinary as well as extraordinary, with any direction of any public officer, pursuant to law, which shall impose any duty upon the Lessor or the Lessee with respect to the management of hazardous waste on the Demised Premises. Lessee, at its sole expense, shall obtain all licenses or permits which may be required by the aforereferenced federal, state and/or municipal authorities for the establishment, creation and operation of Lessee's business operation. Lessee herein covenants to defend and to otherwise indemnify and hold Lessor harmless from any damage, costs or charges associated with or otherwise resulting from its business operation either directly, indirectly, or as a by-product of same. Lessee further agrees to indemnify Lessor against all liabilities, damages, and other expenses, including reasonable attorney's fees which may be imposed upon, incurred by or asserted against Lessor by reason of Lessee's business operations involving directly or indirectly, the creation, use or disposal of hazardous waste the same is defined by federal, state or local law.

IN WITNESS WHEREOF, the Lessor and Lessee have hereunto set their hands and seals the day and year above written.

(SIGNATURES ON FOLLOWING PAGES)

LESSOR:

CITY OF DEBARY

(Witness Signature)

Dan Parrott, CITY Manager

(Witness Print)

(Witness Signature)

(Witness Print)

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of December, 2015, by Dan Parrott, as CITY Manager of the CITY OF DEBARY, a Florida municipal corporation.

Notary Public

Printed or stamped name
My Commission Expires:

Personally known _____ OR Produced Identification _____

Type of Identification Produced _____

LESSEE:

(Witness Signature)

William D. Allen

(Witness Print Name)

(Witness Signature)

(Witness Print Name)

STATE OF FLORIDA:
COUNTY OF ORANGE:

THE FOREGOING INSTRUMENT was acknowledged before me this _____ day of December, 2015, by William D. Allen.

Notary Public

Printed or stamped name
My Commission Expires:

Personally known ____ OR Produced Identification _____
Type of Identification Produced _____

LESSEE:

(Witness Signature)

Catherine K. Allen

(Witness Print Name)

(Witness Signature)

(Witness Print Name)

STATE OF FLORIDA:
COUNTY OF ORANGE:

THE FOREGOING INSTRUMENT was acknowledged before me this _____ day of
December, 2015, by Catherine K. Allen.

Notary Public

Printed or stamped name
My Commission Expires:

Personally known _____ OR Produced Identification _____
Type of Identification Produced _____.

Exhibit "A"

Discount Propane Property

Parcel One

Parcel # 09-19-30-00-00-0060

A PORTION OF THE NORTHWEST ¼ OF NORTHEAST ¼ OF SECTION 9, TOWNSHIP 19 SOUTH, RANGE 30 EAST, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 355.4 FEET EAST AND 521.7 FEET SOUTH OF NORTHWEST CORNER OF NORTHWEST ¼ OF NORTHEAST ¼ OF SAID SECTION 9, TOWNSHIP 19 SOUTH, RANGE 30 EAST; RUN THENCE WEST 330.5 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF THE ATLANTIC COAST LINE RAILROAD; THENCE SOUTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE 223.95 FEET TO A POINT; THENCE EAST 300.75 FEET TO A POINT; THENCE NORTH 221.3 FEET TO THE PLACE OF BEGINNING, EXCEPT THE EAST 15 FEET THEREOF FOR PRIVATE ROAD; TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THE EAST 15 FEET OF THE NORTH 743 FEET OF SAID NORTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 9, TOWNSHIP SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA.