

**DRAFT DOCUMENT SUBJECT TO
GOVERNING BODY APPROVAL**

ASSET SALE AND ACQUISITION AGREEMENT

THIS ASSET SALE AND ACQUISITION AGREEMENT (this “Agreement”) is made and entered into as of this _____ day of _____, 2010 (the “Effective Date”), among FI Kansas Remediation Trust (“Seller”) acting through SELS Administrative Services, L.L.C., a Missouri limited liability company, solely in its capacity as trustee of the FI Kansas Remediation Trust (hereinafter referred to as “SAS”); and the City of Lawrence, Kansas (“Buyer”).

WITNESSETH:

WHEREAS, on May 31, 2002, Farmland Industries, Inc. and certain of its affiliates (“Debtors”) filed petitions for relief under Chapter 11 of the United States Bankruptcy Code, administratively consolidated as Case No. 02-50557-JWV (the “Bankruptcy Cases”) in the United States Bankruptcy Court for the Western District of Missouri (Kansas City) (the “Bankruptcy Court”);

WHEREAS, on December 19, 2003, the Bankruptcy Court entered an Order confirming the Debtors’ Second Amended Joint Plan of Reorganization (the “Plan”), which contemplates a liquidation of the Debtors’ remaining assets;

WHEREAS, Seller is currently in possession of certain assets under the FI Kansas Remediation Trust Agreement dated as of April 30, 2004 (the “Kansas Trust Agreement”). The Kansas Trust Agreement is **Exhibit A** to this Agreement. Seller is authorized to sell and assign assets in accordance with the Kansas Trust Agreement;

WHEREAS, on July 31, 2009, the Bankruptcy Court entered a Final Order closing and terminating the Bankruptcy Cases;

WHEREAS, SAS is charged with administering the FI Kansas Remediation Trust for and on behalf of the beneficiaries under the Kansas Trust Agreement, in accordance with the terms of the Plan and the Kansas Trust Agreement;

WHEREAS, Buyer, before the date of this Agreement, has annexed the Real Estate to fall within the Buyer’s city limits and jurisdiction; and

WHEREAS, Seller desires to sell, assign, transfer, and convey to Buyer certain assets as set forth in this Agreement and Buyer wishes to acquire those assets, all upon the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth in this Agreement, Seller and Buyer agree as follows:

SECTION 1. DEFINITIONS.

The following terms used in this Agreement have the following meanings unless some other meaning is clearly intended:

“Administrative and Remediation Funds” includes the Administrative Funds and the Remediation Funds as those terms are defined in the Kansas Trust Agreement in the amounts that the Administrative Funds and the Remediation Funds are allocated to the Real Estate.

“Affiliate”, as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through ownership of voting securities or by contract or otherwise.

“Agreement” has the meaning assigned to that term in the opening paragraph of this Asset Sale and Acquisition Agreement.

“Assumed Liabilities” has the meaning assigned to that term in Section 2.3 of this Agreement.

“Bankruptcy Cases” has the meaning assigned to that term in the recitals of this Agreement.

“Bankruptcy Code” means 11 U.S.C. §§ 101 *et seq.*

“Bankruptcy Court” has the meaning assigned to that term in the recitals of this Agreement.

“Buyer” has the meaning assigned to that term in the opening paragraph of this Agreement.

“Closing” means the closing of the transaction contemplated by this Agreement.

“Closing Date” means the second business day following the satisfaction of all conditions precedent to the consummation of the transactions contemplated by this Agreement (as set forth in Sections 10 and 11 of this Agreement), or such other date as the parties may mutually agree upon in writing.

“Damages” means any natural resource and other damages, claim, fine, penalty, liability, contribution, indemnity or other obligation, cause of action, response, or other cost or expense, including, without limitation, reasonable investigation, expert or attorneys’ fees, court costs, and other expenses of any legal proceeding.

“**Debtors**” has the meaning assigned to that term in the recitals of this Agreement.

“**Disclosure Schedule**” means Exhibit B to this Agreement that contains the various exceptions to the Seller’s representations, warranties, and covenants.

“**Effective Date**” means the date set forth in the opening paragraph of this Agreement.

“**Environmental Laws**” means any present and future federal, state, and local laws (whether under common law, statute, rule, regulation, or otherwise); requirements under permits issued with respect thereto; and other requirements of any appropriate governmental authorities relating to the environment, or to any Hazardous Substance or to any activity involving Hazardous Substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. (CERCLA), the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Clean Water Act, 33 U.S.C. 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Toxic Substance Control Act, 15 U.S.C. 2601 et seq., and the Safe Drinking Water Act, 42 U.S.C. 300f through 300j, as all of the foregoing may be amended from time to time.

“**Environmental Liability**” means any liability, claim, or demand (including without limitation claims or demands alleging personal injury, property damage, or trespass), obligation, cause of action, accusation, allegation, order, violation, damage, loss, cost, expense, injury, judgment, penalty, or fine alleged by any third party (including, without limitation, any private party or governmental entity), arising out of, relating to, or resulting from, directly or indirectly, in whole or in part, the presence, disposal, treatment, storage, or release of Hazardous Substances in, on, under, or migrating from any of the Transferred Assets. This liability includes any cost of removing or disposing of any Hazardous Substances, any cost of enforcement, any cost of investigation and/or remedial action, and any other cost or expense whatsoever, including, without limitation, reasonable attorneys’, accountants’, engineers’, and consultants’ fees and disbursements, interest, and medical expenses related or relating to the presence, disposal, treatment, storage, or release of Hazardous Substances in, on, under, or migrating from any of the Transferred Assets.

“**EPA**” means the United States Environmental Protection Agency.

“**Excluded Assets**” has the meaning assigned to that term in Section 2.4 of this Agreement.

“**Governmental Authority**” means any foreign, federal, state, municipal, or local government; governmental authority; regulatory or administrative agency; governmental commission, department, board, bureau, court, tribunal, or arbitrator; or arbitral body with jurisdiction.

“**Hazardous Substance**” means any chemical, compound, material, mixture, living organism, or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any “Environmental Laws” as a “hazardous substance,” “hazardous material,” “hazardous waste,” “extremely hazardous waste,” “infectious waste,” “toxic substance,” “toxic

pollutant”, mold, or any microbial or viral agent or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity, including but not limited to any petroleum, polychlorinated biphenyls (“PCBs”), asbestos, radon, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

“**Intended Use**” means use of the Transferred Assets as an employment center and industrial park, or other commercial or industrial uses, or such other similar industrial or commercial uses of the Transferred Assets as permitted by the applicable Governmental Authority.

“**KDHE**” means the Kansas Department of Health and Environment.

“**Kansas Trust Agreement**” has the meaning assigned to that term in the recitals of this Agreement.

“**Knowledge**” means, with respect to Buyer, the actual knowledge (without any duty to investigate) of the City Manager; with respect to Seller, the actual knowledge (without any duty to investigate) of Tyson Hackenberg.

“**Person**” means any individual, partnership, domestic or foreign limited partnership, domestic or foreign limited liability company, domestic or foreign corporation, trust, business trust, employee stock ownership trust, real estate investment trust, estate, association, or other business or not for profit entity.

“**Plan**” has the meaning assigned to that term in the recitals of this Agreement.

“**Real Estate**” means the real property included within the Transferred Assets.

“**Release**” means any past or present, intentional or unintentional, actual or threatened, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Hazardous Substance (including the abandonment or discarding of barrels, containers, and other closed receptacles containing or having contained any Hazardous Substance).

“**Remediation Obligations**” means obligations to be finalized under the draft Consent Order that KDHE transmitted to Buyer on January 12, 2010, entitled “In the Matter of: Existing Pollution at former Farmland Industries Inc. Nitrogen Manufacturing Plant Lawrence, Kansas” and that is attached as **Exhibit C** to this Agreement. Without limitation, the definition of “Remediation Obligations” includes all costs necessary or otherwise directly and indirectly associated with performance of the Remediation Obligations, including all tasks anticipated by the Required Remediation under the to be finalized Consent Order, **Exhibit C** to this Agreement; and also including, but not limited to permitting costs, governmental oversight costs, insurance on remediation equipment, demolition, utilities, etc.

“**SAS**” has the meaning assigned to that term in the opening paragraph of this Agreement.

“Seller” has the meaning assigned to that term in the opening paragraph of this Agreement.

“Site Funds” has the meaning assigned to that term in Section 3.2 of this Agreement.

“Transferred Assets” has the meaning assigned to that term in Section 2.1 of this Agreement.

SECTION 2. PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES.

2.1 **Transferred Assets.** Subject to the terms and conditions of this Agreement, and subject to the representations and warranties made in this Agreement, on the Closing Date Seller will sell, assign, transfer, and convey to Buyer all of Seller’s right, title, and interest in and to the assets set forth on Exhibit D to this Agreement (the “Transferred Assets”).

2.2 **“AS IS” TRANSACTION.** BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED BY THIS AGREEMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE TRANSFERRED ASSETS OR ANY OTHER MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE INCOME TO BE DERIVED OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE TRANSFERRED ASSETS; THE PHYSICAL CONDITION OF ANY ASSET THAT IS PART OF THE TRANSFERRED ASSETS; THE ENVIRONMENTAL CONDITION (INCLUDING WITH RESPECT TO ENVIRONMENTAL LIABILITY) OR OTHER MATTER RELATING TO THE PHYSICAL CONDITION OF THE REAL ESTATE OR IMPROVEMENTS THEREON OR WHICH ARE THE SUBJECT OF ANY REAL PROPERTY LEASE TO BE ASSUMED BY BUYER AT THE CLOSING; THE ZONING OF ANY REAL ESTATE; THE VALUE OF THE TRANSFERRED ASSETS (OR ANY PORTION THEREOF); THE TRANSFERABILITY OF TRANSFERRED ASSETS; THE TERMS, AMOUNT, VALIDITY, OR ENFORCEABILITY OF ANY ASSUMED LIABILITIES; THE TITLE OF THE TRANSFERRED ASSETS (OR ANY PORTION THEREOF); THE MERCHANTABILITY OR FITNESS OF THE PERSONAL PROPERTY OR ANY OTHER PORTION OF THE TRANSFERRED ASSETS FOR ANY PARTICULAR PURPOSE; OR ANY OTHER MATTER OR THING RELATING TO THE TRANSFERRED ASSETS OR ANY PORTION THEREOF. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLER HEREBY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE TRANSFERRED ASSETS. BUYER FURTHER ACKNOWLEDGES THAT BUYER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL (INCLUDING ENVIRONMENTAL) CONDITION OF THE TRANSFERRED ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE TRANSFERRED ASSETS AS BUYER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE TRANSFERRED

ASSETS EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, BUYER WILL ACCEPT THE TRANSFERRED ASSETS AT THE CLOSING “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS,” EXCEPT AS OTHERWISE EXPRESSLY PROVIDED BY THIS AGREEMENT.

2.3 **Liabilities.** Subject to the terms and conditions of this Agreement, Buyer will, as of the Closing Date, assume and discharge the obligations and liabilities of Seller described on **Exhibit E** to this Agreement, including the Remediation Obligations (the “Assumed Liabilities”). All other obligations and liabilities of Seller, whether accrued or contingent or due or not due, that Buyer does not expressly assume in this Agreement will be and remain the obligations and liabilities of Seller to pay and discharge, and Buyer will not be obligated for any of those obligations or liabilities. **BUYER ACKNOWLEDGES THAT IT HAS RECEIVED AND REVIEWED A COPY OF THE KANSAS TRUST AGREEMENT (ATTACHED TO THIS AGREEMENT AS EXHIBIT A).**

2.4 **Excluded Assets.** The Transferred Assets only include those assets specifically listed on **Exhibit D** to this Agreement and do not include any other asset of Seller (collectively, the “Excluded Assets”). By way of example and not limitation, the following are Excluded Assets: (a) any general intangible, (b) any cash on hand or in banks other than those funds to be transferred to Buyer as set forth in **Section 3.2**, and (c) those assets set forth on **Exhibit D-4**. Any Excluded Assets not removed from the Transferred Assets within forty-five (45) days after Closing will be deemed to be the property of Buyer at Buyer’s sole discretion. Seller shall be solely responsible for all maintenance, repairs, insurance, and taxes associated with the Excluded Assets.

SECTION 3. **CONSIDERATION FOR SALE.**

3.1 Buyer’s consideration for the Transferred Assets will be Buyer’s assumption of the Assumed Liabilities at Closing.

3.2 At the Closing on the Closing Date, Seller will pay to Buyer by wire transfer an amount (the “Site Funds”) equal to Eight Million Five Hundred Thousand Dollars (\$8,500,000). The Site Funds received by Buyer will be used by Buyer solely for costs and expenses associated with the Transferred Assets, including but not limited to the Remediation Obligations, demolition of physical structures, carrying costs, improvements, and infrastructure. Buyer will deposit and maintain the Site Funds in a separate account until those funds are fully expended or until completion of the Remediation Obligations, whichever comes first. If any Site Funds remain after completion of the Remediation Obligations, Buyer may utilize these remaining funds for other improvements to, or maintenance of, the Transferred Assets.

SECTION 4. **CLOSING.**

4.1 **Closing Date.** The Closing will take place at _____ on the Closing Date, at the offices of Bryan Cave, LLP, 1200 Main Street, 3500 One Kansas City Place Kansas City, Mo. 64105. Notwithstanding anything to the contrary in this Agreement, Buyer may

engage the services of a local title company to facilitate the Closing on the Closing Date by recording the deed and issuing any title insurance desired by Buyer, with the costs for same to be borne solely by Buyer.

4.2 **Transfer of Assets.** At the Closing, effective as of 11:59 p.m. Central Time on the Closing Date, Seller will sell, assign, transfer, and convey to Buyer (or its designee) all of its right, title, and interest in and to the Transferred Assets. Such sale, assignment, transfer, and conveyance will be effected or evidenced by Seller's delivery to Buyer of appropriate special warranty deeds, bills of sale, assignments, and other documents reasonably acceptable in form and substance to Buyer, the title company issuing the owner's title insurance policy to Buyer, and Seller. Buyer will pay all applicable recording and transfer fees on the transfer. All real estate ad valorem taxes; utility charges; rents; and other amounts payable under leases, licenses, and other contracts will be prorated as of the Closing Date based on the most recent information available.

SECTION 5. **SELLER'S REPRESENTATIONS AND WARRANTIES.**

Seller hereby represents and warrants to Buyer as follows (except as set forth on the Disclosure Schedules attached as **Exhibit B** to this Agreement):

5.1 **Authorization for Agreement.** The execution, delivery, and performance of this Agreement by Seller and the consummation of the transactions contemplated by this Agreement will have been duly authorized by all necessary actions of Seller prior to the Closing, and this Agreement is, and any documents or instruments to be executed and delivered by Seller pursuant to this Agreement will be, legal, valid, and binding obligations of Seller enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium, or similar laws from time to time in effect that affect creditors' rights generally and by legal and equitable limitations on the availability of equitable remedies.

5.2 **Organization.** Seller is a trust established under the Kansas Trust Agreement. Subject to EPA and KDHE approvals, Seller has all requisite power and authority to enter into this Agreement and to sell, assign, transfer, and convey the Transferred Assets to Buyer under this Agreement. Except as set forth on the Disclosure Schedule, neither the execution and delivery of this Agreement nor the sale of the Transferred Assets by Seller requires the consent or approval of; the giving of notice to; registration, filing, or recording with; or the taking of any other action by, Seller in respect of any federal, state, or local governmental authority.

5.3 **Site Funds.** Seller has, and at the Closing Seller will transfer to Buyer, pursuant to previously received wire transfer instructions, the Site Funds in the amount of Eight Million Five Hundred Thousand Dollars (\$8,500,000).

5.4 **Title to Properties.** Seller has, and at the Closing Seller will transfer to Buyer, title to all of the Transferred Assets. Prior to Closing, Seller and Buyer will cooperate with each other to determine which, if any, leases or executory contracts identified on **Exhibit D-3** will be assumed and assigned to Buyer. Seller represents and warrants that the leases and

executory contracts identified on **Exhibit D-3** are the only leases and executory contracts on or relating to the Real Property.

5.5 **No Litigation.** No suit; action; or legal, administrative, arbitration, or other proceeding is pending that would have a material adverse effect on the Transferred Assets. To Seller's Knowledge, (a) no investigation by any governmental agency pertaining to the Transferred Assets is pending or has been threatened by or against Seller that would be likely to have a material adverse effect on the Transferred Assets and (b) no suit; action; or legal, administrative, arbitration, or other proceeding has been threatened that would have a material adverse effect on the Transferred Assets.

5.6 **No Finder's Fee.** Seller has not employed or retained any broker, agent, finder, or other party, or incurred any obligation for brokerage fees, finder's fees, or commissions with respect to the transactions contemplated by this Agreement, or otherwise dealt with anyone purporting to act in the capacity of a finder or broker with respect thereto whereby Buyer may be obligated to pay such a fee or commission.

5.7 **Conduct Prior to Closing.** From execution of this Agreement until the Closing Date, Seller will not submit any draft plan, proposal, or schedule to KDHE regarding the Transferred Assets, unless Seller first obtains Buyer's written approval of that draft plan, proposal, or schedule. Buyer will not unreasonably withhold its approval.

SECTION 6. **RESERVED**

SECTION 7. **REPRESENTATION AND WARRANTIES OF BUYER.**

Buyer represents and warrants to Seller as follows:

7.1 **Authorization for Agreement.** The execution, delivery, and performance of this Agreement by Buyer and the consummation of the transactions contemplated by this Agreement will have been duly authorized by all necessary actions of Buyer prior to the Closing, and this Agreement is, and any documents or instruments to be executed and delivered by Buyer pursuant to this Agreement will be, legal, valid, and binding obligations of Buyer enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium, or similar laws from time to time in effect that affect creditors' rights generally and by legal and equitable limitations on the availability of equitable remedies.

7.2 **Organization.** Buyer is a Kansas State Municipality of the First Class, validly existing under the laws of the State of Kansas. Buyer has all requisite power and authority to enter into this Agreement and to perform its obligations under this Agreement. All actions necessary for the execution and delivery of this Agreement and consummation of the transactions contemplated by this Agreement by Buyer have been taken by Buyer and its governing body.

7.3 **No Violation.** The execution and delivery of this Agreement and all other agreements, instruments, and documents contemplated by this Agreement by Buyer and the consummation of the transactions contemplated by this Agreement will not conflict with or violate or constitute a breach or default under the charter, code or other governing documents of

Buyer or any provision of any mortgage; trust indenture; lien; lease; agreement; instrument; or court order, judgment, or decree to which Buyer is bound.

7.4 **Finder's Fees.** Buyer has not employed or retained any broker, agent, finder, or other party or incurred any obligation for brokerage fees, finder's fees, or commissions with respect to the transactions contemplated by this Agreement, or otherwise dealt with anyone purporting to act in the capacity of a finder or broker with respect thereto whereby Seller may be obligated to pay such a fee or a commission.

7.5 **No Litigation.** No suit; action; or legal, administrative, arbitration, or other proceeding is pending that would have a material adverse effect on the Transferred Assets. To Buyer's Knowledge, (a) no investigation by any governmental agency pertaining to the Transferred Assets is pending or has been threatened by or against Seller that would be likely to have a material adverse effect on the Transferred Assets and (b) no suit; action; or legal, administrative, arbitration, or other proceeding has been threatened that would have a material adverse effect on the Transferred Assets.

7.6 **No Financing Contingency.** Buyer's obligations under this Agreement are not contingent upon procuring financing for the transaction contemplated under this Agreement.

7.7 **No Rights or Options to Purchase.** Buyer does not have, nor does any Affiliate of Buyer have, any interest in, or right or option to purchase, any of the Transferred Assets that arises or exists outside of the terms of this Agreement, and to the extent any such interest, right, or option is possessed by Buyer or any Affiliate of Buyer, such interest, right, or option is waived by Buyer for itself and all Affiliates of Buyer.

SECTION 8. **COVENANTS OF SELLER.**

8.1 **Seller's Trustee Status; Seeking EPA and KDHE Approval.** Pursuant to the Plan and the Kansas Trust Agreement, this Agreement and the transactions contemplated by this Agreement are contingent upon the approval and authorization of the EPA and KDHE. Seller agrees within ten (10) days after the Effective Date to seek EPA and KDHE approval of the transactions contemplated by this Agreement. Seller will promptly advise Buyer of any written objections to this Agreement filed with the EPA or KDHE.

8.2 **Access.** From and after the date of this Agreement until the Closing Date, Seller will, upon reasonable advance notice, afford to Buyer's independent public accountants, counsel, lenders, consultants, and other representatives, reasonable access during normal business hours to the Transferred Assets and all records in Sellers' possession pertaining to the Transferred Assets. Buyer, however, will not be entitled to access to any materials containing privileged communications or information about employees, disclosure of which might violate an employee's reasonable expectation of privacy. Buyer expressly acknowledges that nothing in this section is intended to give rise to any contingency to Buyer's obligations to proceed with the transactions contemplated in this Agreement.

SECTION 9. TITLE.

9.1 **Title Insurance.** Not later than fifteen (15) days after the Effective Date of this Agreement, Buyer will order from a title company a commitment for an American Land Title Association (“ALTA”) Owner’s Policy (Form 2006) of title insurance covering the Real Estate and the buildings, structures, improvements, and fixtures that are located on the Real Estate (the “Commitment”). Buyer will pay the cost for the preparation of the Commitment and the cost of the final title insurance policy.

9.2 **Title Evidence.** Not later than the Effective Date of this Agreement, Seller will deliver to Buyer abstracts of title together with copies of previous title insurance policies, commitments, title opinions, certificates of title, prior deeds, or other title evidence in its possession evidencing Seller’s or its predecessors’ ownership of the Real Estate (collectively the “Title Evidence”).

9.3 **Examination.** Buyer will examine the Title Evidence, the Commitment, copies of all Schedule B exception documents, and any survey provided and will be allowed fifteen (15) days after the receipt of the last of these documents to notify Seller of any objections to Seller’s title to the Real Estate. If Buyer objects to Seller’s title, Seller will, within fifteen (15) days following receipt of notice from Buyer or on or before the Closing Date, whichever is earlier, have the right and option either to: (1) terminate this Agreement or (2) use reasonable efforts (but not involving the payment of money) to cure the objections. If Seller is unable or unwilling to cure any objection(s) to title to the Real Estate within fifteen (15) days of receipt of Buyer’s notice or prior to the Closing Date, whichever occurs first, then Buyer will have the right and option to: (1) terminate this Agreement, and neither party will have any further obligations to the other party; (2) waive its objections and proceed to Closing; or (3) allow Seller an additional period of time in which to cure the objections, in which case the Closing Date will be appropriately extended.

SECTION 10. CONDITIONS PRECEDENT TO BUYER’S OBLIGATIONS.

The obligations of Buyer at the Closing are subject to the satisfaction on or prior to the Closing Date of the conditions set forth below. Notwithstanding the failure of any one or more of such condition, Buyer may, at its sole option and pursuant to written waiver, nevertheless proceed with the Closing without satisfaction, in whole or in part, of any one or more of such conditions, except the conditions and contingencies set forth in Section 10.5 of this Agreement. To the extent that as of the Closing Date Buyer has Knowledge of the failure of any of such conditions or the breach by Seller of any of the representations or warranties contained in this Agreement and nevertheless proceeds with the Closing, Buyer shall be deemed to have waived for all purposes any right or remedy it may have against Seller by reason of the failure of any such condition or the breach of any such representation or warranty, provided that by proceeding with the Closing Buyer will not be deemed to have waived any right or remedy it may have against Seller by reason of failure of any condition or for breach of any representation or warranty as to which Buyer does not have Knowledge as of the Closing Date.

10.1 **Representations and Warranties True.** The representations and warranties made by Seller in this Agreement must be true and correct in all material respects on

and as of the Closing Date with the same effect as though such representations and warranties had been made or given on and as of the Closing Date.

10.2 **Compliance with Agreement.** Seller must have performed and complied in all material respects with all of its obligations under this Agreement that are to be performed or complied with by it prior to or on the Closing Date.

10.3 **Condition of Transferred Assets.** The Transferred Assets must be in substantially the same condition as the condition they are in on the date of this Agreement, ordinary wear and tear excepted.

10.4 **Buyer's Due Diligence.** Seller must have provided Buyer with a copy of any existing site survey and title work regarding the Transferred Assets and commercially reasonable cooperation (including access to the Transferred Assets) in conducting or investigating the following at Buyer's sole cost and expense: (a) a Phase I environmental site assessment, soil tests, or other environmental tests that Buyer reasonably deems necessary; (b) commercially reasonable engineering and operational due diligence on the Transferred Assets; (c) rail service and related operations; and (d) any governmental requirement, restriction, or limitation relating to the ownership or commercial operation of Transferred Assets. Buyer has no obligation to close the transaction under this Agreement until it receives results of the foregoing investigation that are satisfactory to Buyer.

10.5 **EPA and KDHE Agreements.** There must be an Administrative Consent Order in a form such as **Exhibit C** to this Agreement, other agreements that EPA or KDHE may require, and releases or prospective purchaser agreements or covenants not to sue in favor of Buyer from EPA and KDHE, all in form and substance satisfactory to Buyer in connection with the transactions contemplated by this Agreement within forty-five (45) days before the Closing. The decision whether to satisfy this contingency and enter into such other agreements with EPA or KDHE will be at Buyer's sole discretion. This paragraph imposes no Environmental Liability on Buyer and does not in any way expand the scope or liabilities assumed by Buyer under this Agreement.

10.6 **Site Funds.** The Seller must have Administration and Remediation funds on the Closing Date which when combined are in excess of the Site Funds and any Pre-Closing Liabilities to be paid by Seller pursuant to Section 12.2.

10.7 **Amendment to Trust Agreement.** The Kansas Trust Agreement shall have been amended by unanimous agreement of all necessary parties, including but not limited to KDHE and Capitana Redevelopment Group, LLC, in a form such as **Exhibit F**, to permit the transactions contemplated by this Agreement.

SECTION 11. **CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS.**

The obligations of Seller at the Closing are subject, at Seller's election, to the satisfaction on or prior to the Closing Date of the conditions set forth below. Notwithstanding the failure of any one or more of such conditions, Seller may, at its option, nevertheless proceed with the Closing without satisfaction, in whole or in part, of any one or more of such conditions and without written waiver. To the extent that as of the Closing Date Seller has Knowledge of

the failure of any of such conditions or the breach by Buyer of any of the representations or warranties contained in this Agreement and nevertheless proceeds with the Closing, Seller will be deemed to have waived for all purposes any right or remedy either may have against Buyer by reason of failure of any condition or the breach of any such representation or warranty, provided that by proceeding with the Closing Seller will not be deemed to have waived any right or remedy it may have against Buyer by reason of failure of any condition or for breach of any representation or warranty as to which Seller does not have Knowledge as of the Closing Date.

11.1 **Representations and Warranties True.** The representations and warranties made by Buyer in this Agreement must be true and correct in all material respects on and as of the Closing Date with the same effect as though such representations and warranties had been made or given on and as of the Closing Date.

11.2 **Compliance with Agreement.** Buyer must have performed and complied in all material respects with all of its obligations under this Agreement that are to be performed or complied with by it prior to or on the Closing Date.

11.3 **EPA and KDHE Approval.** Seller must have received, in a form reasonably acceptable to it, EPA's and KDHE's approval of the transactions contemplated by this Agreement, as provided in Section 6.3 of the Kansas Trust Agreement.

11.4 **Amendment to Trust Agreement.** The Kansas Trust Agreement shall have been amended by unanimous agreement of all necessary parties, including but not limited to KDHE and Capitana Redevelopment Group, LLC, in a form such as **Exhibit F**, to permit the transactions contemplated by this Agreement.

SECTION 12. **POST CLOSING.**

12.1 **Release.** Except as otherwise provided in this Agreement, upon Closing, Buyer, and Seller, release each other and SAS, and their respective Affiliates, direct and indirect, shareholders, directors, officers, employees, agents, representatives, trustees, beneficiaries, and predecessors and successors in interest (collectively, the "Released Parties") from all of the following that relate to the Transferred Assets or the transaction contemplated by this Agreement: all liabilities, actions, rights of action, contracts, indebtedness, obligations, claims, causes of action, suits, damages, demands, costs, expenses, and attorneys' fees whatsoever, of every kind and nature, known or unknown, disclosed or undisclosed, accrued or unaccrued, existing at any time, that the parties, their Affiliates, successors, assigns, invitees, licensees, and other persons have or may have against any of the Released Parties, including, but not limited to, those arising directly or indirectly out of or as a consequence of the actual or suspected use, storage, handling, generation, transportation, manufacture, production, release, discharge, disposal, or presence of any Hazardous Substance on, in, under or about the Real Estate or the air, soil, or groundwater thereof, by the Released Parties or any other person or entity, including, without limitation, any and all costs incurred due to any investigation of the Real Estate or any cleanup, remediation, removal, or restoration mandated by or pursuant to any Environmental Laws, and those arising from or related to, or in any way connected with, the Transferred Assets.

12.2 **Seller's Payment and Discharge of Pre-Closing Liabilities.** After Closing, Seller will pay and discharge all remaining liabilities, other than Assumed Liabilities, arising or accruing from the ownership or operation of the Transferred Assets prior to Closing.

12.3 **Remediation Obligations.** After the Closing, Buyer will complete the Remediation Obligations with respect to the Transferred Assets. Buyer shall use the Site Funds solely for costs and expenses associated with the Transferred Assets, including but not limited to the Remediation Obligations, demolition of physical structures, carrying costs, improvements, and infrastructure. Buyer will deposit and maintain the Site Funds in a separate account until those funds are fully expended or until completion of the Remediation Obligations, whichever comes first. If any Site Funds remain after completion of the Remediation Obligations, Buyer may utilize these remaining funds for other improvements to, or maintenance of, the Transferred Assets.

12.4 **Indemnification.** Buyer will indemnify and hold harmless Seller from and against all loss, liability, damages, and expense (including attorney's fees) arising out of, in connection with, or related to the Assumed Liabilities (including Remediation Obligations) and any actions, causes of action, or proceedings related thereto.

12.5 **Buyer's Environmental Covenants.** After the Closing,

(a) Seller will deliver to Buyer any and all notices, correspondence, and other communication in whatever format that Seller receives from any Governmental Authority relating to Buyer's Remediation Obligations within three (3) business days after receipt. Seller acknowledges that, as an inducement to entering into this transaction, Buyer is relying on Seller's covenant and agreement to permit Buyer to complete all aspects of the Remediation Obligations, including any communications with applicable Governmental Authority. If Seller receives a notice, correspondence, or communication from any Governmental Authority and Seller is obligated to respond by applicable Environmental Laws, then in addition to promptly delivering a copy of this notice to Buyer, Seller will coordinate and cooperate with Buyer in responding to the request.

(b) If Seller discovers any event or condition that it suspects is a previously undisclosed environmental condition, it will, as soon as possible, notify Buyer and provide Buyer with a description of and an explanation why the condition is an environmental condition. Disputes with respect to the same shall be resolved pursuant to the procedures set forth in Section 14.14 of this Agreement.

(c) Seller will provide reasonable cooperation (including, without limitation, execution of all permits, applications, filings, and other instruments, and assignments thereof, required by applicable Governmental Authorities and providing copies of all materials in Seller's possession or control requested by Buyer relating to the Remediation Obligations) with Buyer's efforts to perform and complete all Remediation Obligations; provided, however, that such cooperation shall not require Seller to incur any expense to any third party.

(d) Seller will cooperate with Buyer after the Closing to obtain and have issued and recorded (if required) with respect to the Real Estate any notices, deed, or use

restrictions required by applicable Governmental Authorities as part of the Remediation Obligations.

SECTION 13. SURVIVAL OF COVENANTS, AGREEMENTS, REPRESENTATIONS AND WARRANTIES.

Except as set forth in this Section 13, the representations and warranties set forth in this Agreement will not survive the Closing. The Buyer's covenants, agreements, and obligations set forth in Section 12 of this Agreement, and all of Seller's covenants, agreements, representations, warranties, and obligations set forth in Section 12 of this Agreement will survive the Closing indefinitely.

SECTION 14. MISCELLANEOUS.

14.1 **Expenses.** Each of the parties to this Agreement agrees to be responsible for its own costs, without right of reimbursement from the others, incurred by it incident to the performance of its obligations under this Agreement, whether or not the transactions contemplated by this Agreement are consummated, including, without limitation, those costs incident to the preparation of this Agreement, and the fees and disbursements of legal counsel, accountants, and consultants employed by the respective parties in connection with the transactions contemplated by this Agreement.

14.2 **Termination and Abandonment.** This Agreement may be terminated and abandoned as follows: (a) by mutual written consent of Buyer and Seller; (b) by any party if the Closing has not occurred within one hundred twenty (120) days after the Effective Date; or (c) at the election of the a non-breaching party if there is a breach of this Agreement by Buyer, Seller and failure of the breaching party to cure that breach, to the extent curable, within thirty (30) days after receipt of written notice from the non-breaching party specifying such breach. If any party elects to exercise its right to terminate this Agreement, the terminating party must promptly provide written notice to the other party. Each party will pay its own expenses incident to the preparation for the consummation of this Agreement and the transactions contemplated by this Agreement. Each party acknowledges and agrees that the only remedy for a breach of any representation, warranty, covenant, or agreement required to be performed by any of the parties prior to the Closing, will be the non-defaulting party's option to terminate this Agreement pursuant to and to the extent permitted by this Section 14.2.

14.3 **Further Assurances.** Except as otherwise expressly set forth in this Agreement, Buyer and Seller will cause all conditions precedent to the Closing to be fulfilled in a timely manner. Following the Closing, Seller, and Buyer will, upon request of another party, do, execute, acknowledge, and deliver, or cause to be done, executed, acknowledged, and delivered, all such further acts, assignments, transfers, conveyances, powers of attorney, and assurances as may be reasonably required to accomplish the transactions contemplated by this Agreement.

14.4 **Inform of Litigation.** During the period from the date of this Agreement to the Closing Date, each party will promptly inform the other party in writing of any litigation commenced against such party in respect of the transactions contemplated by this Agreement.

14.5 **Assignment.** This Agreement may not be assigned by any party without the prior written consent of the other parties and any attempted assignment without such written consent will be null and void and without legal effect.

14.6 **Governing Law.** This Agreement will be governed by and construed and interpreted in accordance with the laws of the State of Kansas applicable to agreements made and to be performed entirely within such state, including all matters of construction, validity, and performance.

14.7 **Amendment and Modification.** Buyer and Seller may amend, modify, and supplement this Agreement in such manner as may be mutually agreed by them in writing.

14.8 **Notices.** All notices, requests, demands, and other communications under this Agreement will be deemed to be duly given if delivered by hand, if mailed by certified or registered mail with postage prepaid, if delivered by fax (with confirmation confirmed), or if sent by nationally-recognized overnight courier as follows:

If to Seller:

FI Kansas Remediation Trust
c/o Shaw E & I
11206 Thompson Avenue
Lenexa, KS 66219
Attention: Kamyar Manesh
Fax: (913) 451-2005

With copies to:

SELS Administrative Services, L.L.C.
4171 Essen Lane
Baton Rouge, LA 70809
Attention: Tyson Hackenberg
Fax: (225) 987-3456

And

Laurence M. Frazen, Esq.
Bryan Cave LLP
3300 One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105
Fax: (816) 374-3300

If to Buyer:

Dave Corliss
City Manager
City of Lawrence

6 East 6th Street
Lawrence, Kansas 66044
Fax (785) 832-3405

and

William F. Ford, Esq.
Brian T. Fenimore, Esq.
Lathrop & Gage LLP
2345 Grand Blvd., Ste 2800
Kansas City, MO 64108
Fax (816) 292-2001

or to such other addresses as any party may provide to the others in writing.

14.9 **Entire Agreement.** Except for any confidentiality agreement between the parties (which will survive the execution and delivery of this Agreement), this Agreement, including the Exhibits, cancels, merges, and supersedes all prior and contemporaneous understandings and agreements relating to the subject matter of this Agreement, written or oral, between the parties to this Agreement and contains the entire agreement of the parties to this Agreement, and the parties to this Agreement have no agreements, representations, or warranties relating to the subject matter of this Agreement that are not set forth in this Agreement.

14.10 **Successors.** This Agreement will be binding upon and will inure to the benefit of each of the parties to this Agreement and to their respective successors and permitted assigns.

14.11 **Counterparts.** This Agreement may be executed in one or more counterparts each of which will be deemed an original but all of which together will constitute but one and the same instrument.

14.12 **Headings.** The headings used in this Agreement are for convenience only and do not constitute a part of this Agreement.

14.13 **Exhibits and Schedules.** All of the exhibits and schedules to this Agreement are incorporated in this Agreement and made a part of this Agreement by reference.

14.14 **Jurisdiction.** Any suit, action, or proceeding between the parties to this Agreement relating to this Agreement or to any agreement, document, or instrument delivered pursuant or in connection with the transactions contemplated, or in any other manner arising out of or relating to the transactions contemplated by or referenced in this Agreement must be commenced and maintained exclusively in the District Court of Douglas County, Kansas. The parties to this Agreement submit themselves unconditionally and irrevocably to the personal jurisdiction of such court. The parties further agree that venue will be in the District of Kansas, Kansas City, Kansas. The parties irrevocably waive any objection to such personal jurisdiction or venue, including, but not limited to, the objection that any suit, action, or proceeding brought in the District Court of Douglas County, has been brought in an inconvenient forum.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

SELLER:

FI KANSAS REMEDIATION TRUST

By: SELS Administrative Services, L.L.C.,
a Missouri limited liability company,
as Trustee

By: _____
Tyson Hackenberg, Manager

BUYER:

CITY OF LAWRENCE, KANSAS

By: _____

Name: _____

Title: _____

Exhibits

- A Kansas Trust Agreement
- B Disclosure Schedule
- C KDHE Draft Consent Order
- D Transferred Assets
- E Assumed Liabilities
- F Amendment to Kansas Trust Agreement

[Kansas Trust Agreement]

[see attached]

Disclosure Schedule

1. The assignment of certain environmental and other permits may be subject to the consent or approval of the issuing governmental authority. Other environmental and other permits may not be transferable, in which case Buyer will need to make application for new permits in its name.
2. The sale of the Transferred Assets is subject to approval of the EPA and KDHE as provided in Section 6.3 of the Kansas Trust Agreement.
3. The Transferred Assets are subject to EPA letter dated _____, KDHE letter dated _____, as such may be amended, and any work plan or scope of work promulgated thereunder.
4. Seller's and SAS's obligations to perform the Remediation Obligations are limited under the terms of the Kansas Trust Agreement and the Plan. In addition and as provided in Exhibit D (as amended) of the Plan, the funds available to satisfy the Remediation Obligations are limited to \$_____).

[KDHE Draft Consent Order]

[see attached]

Transferred Assets

A. Real Estate

The Lawrence, Kansas Nitrogen Plant owned by Seller located in Lawrence Kansas, as more specifically described in the attached **Exhibit D-1**.

B. Personal Property

At the real estate listed above, all tangible personal property located thereon including rolling stock, testing and grading equipment, and tools, as more specifically described in the attached **Exhibit D-2**.

C. Executory Contracts and Unexpired Leases.

The executory contracts and unexpired leases set forth on **Exhibit D-3**.

D. Excluded Assets.

The Excluded Assets are those set forth on **Exhibit D-4**.

Lawrence, Kansas Nitrogen Plant

Legal Description

[To be Reviewed and Revised by Seller]

[Seller needs to confirm property being sold Tracts 9 and 10 may be sold]

TRACT 1

The East One-Half and the Northwest One-Quarter of the Northwest One-Quarter of Section 4, Township 13, Range 20, in Douglas County, Kansas, Less railroad right-of-way; ALSO Beginning at the Northwest corner of the Northeast One-Quarter of Section 4, Township 13 South, Range 20 East; thence East along the North line of said One-Quarter Section, 722 feet; thence South parallel with the East line of Section, 1136.5 feet to the North line of the Atchison, Topeka and Santa Fe Railroad right-of-way; thence Northwest along the North line of said right-of way, 800 feet more or less to the West line of the Northeast One-Quarter; thence North along the West line of said One-Quarter Section, 811 feet, more or less, to the place of beginning; ALSO That part of the Northeast One-Quarter of Section 4, Township 13, Range 20 lying South of the Atchison, Topeka & Santa Fe Railroad right-of-way.

TRACT 2

AND

The South 40 acres of the West 80 acres of the Northwest One-Quarter of Section 4, Township 13 South, Range 20 East of the Sixth Principal Meridian, in Douglas County, Kansas.

TRACT 3

AND

The East One-Half of the East One-Half of the Southeast One-Quarter of the Southwest One-Quarter of Section 4, Township 13, Range 20, Douglas County, Kansas and Less that part taken by the State of Kansas for highway purposes.

TRACT 4

AND

A tract of land located in the Northwest One-Quarter of the Southeast One-Quarter of Section 4, Township 13 South, Range 20 East of the 6th P.M., in the City of Lawrence, Douglas County, Kansas, more particularly described as follows: Beginning at the Northwest corner of the Southeast One-Quarter of Section 4, Township 13 South, Range 20 East of the 6th P.M.; thence South 89 degrees 18 minutes 06 seconds East along the North line of said Southeast One-Quarter, a distance 1,337.88 feet; thence South 00 degrees 06 minutes 11 seconds East, a distance of 1,122.51 feet; thence North 89 degrees 18 minutes 06 seconds West, a distance of 1,342.28 feet to a point on the West line of said Southeast One-Quarter; thence North 00 degrees 07 minutes 18 seconds East along said West line, a distance of 1,122.46 feet to the point of beginning. ALSO Beginning at the Northwest corner of the Southeast One-Quarter of Section 4, Township 13 South, Range 20 East of the 6th P.M.; thence South 89 degrees 18 minutes 06

seconds East along the North line of said Southeast One-Quarter, a distance of 800.00 feet; thence South 00 degrees 07 minutes 18 seconds West, a distance of 550.00 feet; thence North 89 degrees 18 minutes 06 seconds West, a distance of 800.00 feet to a point on the West line of said Southeast One-Quarter; thence North 00 degrees 07 minutes 18 seconds East along said West line, a distance of 550.00 feet to the point of beginning.

TRACT 5

AND

The North 50 acres of the South 60 acres of the East One-Half of the Southeast One-Quarter of Section 5, Township 13 South, Range 20 AND the West 151 feet of the South 10 acres of the East One-Half of the Southeast One-Quarter of Section 5, Township 13 South, Range 20, all East of the Sixth Principal Meridian, in Douglas County, Kansas, Less, Beginning at a point 586.1 feet West of the Northeast corner of the South 10 acres of the East One-Half of the Southeast One-Quarter of Section 5, Township 13 South, Range 20 East; thence North 217.8 feet; thence East 200.0 feet; thence South 217.8 feet more or less to the North line of said South 10 acres; thence West along said North line, 200.0 feet to the point of beginning, all in Douglas County, Kansas. Also Less, that part described as follows: Beginning at the Northeast corner of the South 10 acres of the East One-Half of the Southeast One-Quarter of Section 5, Township 13, Range 20, Douglas County, Kansas; thence West 586.1 feet for a point of beginning; thence West 164.3 feet; thence North 265.13 feet; thence East 164.3 feet; thence South 265.13 feet to the point of beginning, in Douglas County, Kansas, Also less that part described as follows: Commencing at the Northwest corner of Lot 1, PYLE SUBDIVISION, an addition to the City of Lawrence, Douglas County, Kansas, according to the recorded plat thereof, for a point of beginning; thence North 00 degrees 06 minutes 05 seconds West, 217.80 feet; thence North 89 degrees 44 minutes 05 seconds East, 200.00 feet; thence South 00 degrees 07 minutes 15 seconds East, 123.72 feet; thence North 89 degrees 44 minutes 05 seconds East, 100.00 feet; thence South 00 degrees 04 minutes 33 seconds East, 94.08 feet; thence South 89 degrees 44 minutes 05 seconds West, 300.00 feet along the North line of said Lot 1 to the point of beginning, all in the Southeast One-Quarter of Section 5, Township 13, Range 20, in Douglas County, Kansas.

TRACT 6

AND

A tract of land described as follows, to-wit: Commencing at the Southeast corner of Section 5, Township 13 South, Range 20 East of the 6th P.M., Douglas County, Kansas; thence North 00 degrees 05 minutes 00 seconds East, 125.82 feet to the point of beginning; thence South 88 degrees 34 minutes 35 seconds West, 85.09 feet; thence North 00 degrees 04 minutes 33 seconds West, 205.92 feet; thence North 89 degrees 44 minutes 05 seconds East, 85.63 feet; thence South 00 degrees 05 minutes 00 seconds West, 204.06 feet to the point of beginning.

TRACT 7

AND

Lot 1, PYLE SUBDIVISION, an addition to the City of Lawrence, Douglas County, Kansas, according to the recorded plat thereof, ALSO A tract in the Southeast One-Quarter of the Southeast One-Quarter of Section 5, Township 13 South, Range 20 East of the 6th P.M., in the City of Lawrence, Douglas County, Kansas, described as follows: Commencing at the Northwest corner of Lot 1, PYLE SUBDIVISION, an addition to the City of Lawrence; thence North 00 degrees 06 minutes 05 seconds West, 217.80 feet; thence North 89 degrees 44 minutes

05 seconds East, 200.00 feet; thence South 00 degrees 07 minutes 15 seconds East, 123.72 feet; thence North 89 degrees 44 minutes 05 seconds East, 100.00 feet; thence South 00 degrees 04 minutes 33 seconds East, 94.08 feet; thence South 89 degrees 44 minutes 05 seconds West, 300.00 feet along the North line of said Lot 1 to the point of beginning.

TRACT 8

AND

The North 60 acres of the East One-Half of the Northeast One-Quarter of Section 8, Township 13 South, Range 20 East of the 6th P.M., in Douglas County, Kansas, Less that part thereof taken for highway purposes by condemnation in Case No. 25586 in the District Court of Douglas County, Kansas AND the Northwest One-Quarter of the Northwest One-Quarter of Section 9, Township 13, Range 20, in Douglas County, Kansas, Less that part thereof taken for highway purposes by condemnation in Case 25586 in the District Court of Douglas County, Kansas.

TRACT 9

AND

The West One-Half of the North One-Half of the East One-Half of the Northwest One-Quarter of Section 9, Township 13, Range 20, in Douglas County, Kansas, Less that part thereof deeded for highway purposes by deed recorded in Book 266 at Page 15.

TRACT 10

AND

The Southeast One-Quarter of the Northwest One-Quarter AND the South One-Half of the West One-Half of the Northwest One-Quarter, Less the Southwest One-Quarter of the Southwest One-Quarter of the Northwest One-Quarter, all in Section 9, Township 13, Range 20, in Douglas County, Kansas.

TRACT 11

AND

A tract of land in Section 9, Township 12 South, Range 20 East, Douglas County, Kansas, more particularly described as follows: Beginning at a point on the West right-of-way line of a County Road which is 2049.44 feet North and 20 feet West of the Southeast corner of Section 9, Township 12 South, Range 20 East of the Sixth Principal Meridian; thence West 100.00 feet; thence North 100.00 feet; thence East 100.00 feet to the West line of said County road, being 100.00 feet North of the point of beginning; thence South along the West line of the said County road, 100.00 feet to the point of beginning.

Personal Property

All of Seller's personal property as of the _____ date of a joint inspection by representatives of Seller and Buyer, other than the Excluded Assets, including but not limited to equipment, spare parts, machinery, furniture, fixtures, telephone systems, computers, computer software, and other personal property that is either used or intended to be used in conjunction with the Real Estate located commonly known as the Lawrence, Kansas Nitrogen Plant. By way of example and not as a limitation, the personal property includes:

The truck scale;

The railroad track, ballast and ties;

The three (3) railroad scales;

All tanks except tank nos. 5 and 6; and

The mower

Executory Contracts and Unexpired Leases to be Assigned to Buyer

[to be provided]

Excluded Assets

I. Assets excluded from Transferred Assets (Remediation Support Equipment)

[to be provided]

Any books and records Seller intends to retain for administration of the Trust, any books and records belonging to Reorganized FLI, Inc., etc.

II. Assets excluded from Transferred Assets (owned by 3rd parties but not yet removed)

[to be provided]

Three (3) Linde tanks owned by _____ (“Owner”). Owner leases space at the Real Estate to store the tanks through June 2010.

III. Assets excluded from Transferred Assets (executory contracts and unexpired leases)

On the Closing Date, the following executory contracts and unexpired leases shall be either (i) terminated by Seller or (ii) Seller shall provide to all counterparties to such executory contracts and unexpired leases notice of termination or non-renewal:

[to be provided]

Assumed Liabilities

1. All claims asserted after the Closing regarding liabilities and obligations accruing after the Closing under or pursuant to any contracts included in the Transferred Assets.
2. All claims that arise or accrue after the Closing regarding liabilities, obligations, and responsibilities of the owner and/or operator of the Transferred Assets and business conducted thereon to own and/or operate the Transferred Assets and conduct the business conducted thereon in accordance with the requirements of all laws (federal, state, and local), including without limitation those governing land use, zoning, worker safety, and Environmental Laws, all for the period after Closing.
3. The Remediation Obligations.

[Amendment to Kansas Trust Agreement]

[see attached]