

REAL ESTATE SALES AGREEMENT

THIS AGREEMENT is made between W. S. Franz and Mary S. Franz (collectively the "Seller") and the City of Overland Park, Kansas, a municipal corporation ("Purchaser"). The "Effective Date" of this Agreement shall be the date of final acceptance by the last party to sign this Agreement, as indicated below.

WITNESSETH:

WHEREAS, Seller is the owner of certain real property, as hereinafter described, situated in the City of Overland Park; and

WHEREAS, Purchaser is interested in acquiring such real property for the improvement of 159th Street – Quivira Road to Antioch Road ("Improvement"); and

WHEREAS, pursuant to K.S.A. 12-101, Purchaser is authorized to purchase real property for its use; and

WHEREAS, the Seller is interested in selling said property subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and the covenants herein contained, it is agreed as follows:

I. PURCHASE AND SALE

1.1 Seller hereby agrees to sell and convey, and Purchaser hereby agrees to purchase and pay for, a tract of land and improvements thereon as shown on Exhibit A, attached and incorporated herein by this reference, together with all the rights and appurtenances pertaining to the property, including any right, title and interest of Seller in and to adjacent streets or right-of-way (all of such real property, rights and appurtenances, easements, parking or cross access easements, being hereinafter referred to as the "Property"), for the consideration and upon and subject to the terms, provisions and conditions hereinafter set forth.

II. PURCHASE PRICE

2.1 The purchase price for the Property shall be Two Hundred Sixty-Five Thousand Five Hundred and 00/100 Dollars (\$265,500.00) (the "Purchase Price"). The Purchase Price shall be paid in cash at the time of Closing.

III. CONDITIONS PRECEDENT TO PURCHASER'S AND SELLER'S OBLIGATIONS

3.1 The obligations of Purchaser and Seller hereunder to consummate the transactions contemplated hereby are contingent upon the satisfaction of each of the conditions precedent contained in this Article III. Any such condition may be waived in whole or in part by the applicable party at or prior to the Closing, but any such waiver

shall be in writing signed by the waiving party unless otherwise herein expressly agreed. In the event of failure of any of said conditions, the non-waiving party may cancel this Agreement, with notice from such party to the other party, according to the terms hereof.

3.2 At Closing, all of Seller's and Purchaser's representations and warranties shall be true and correct.

3.3 Seller shall convey to Purchaser by general warranty deed (the "Deed"), in the form attached hereto as Exhibit B, good and marketable title in fee simple to all the Property, including air and mineral rights thereto, free and clear of any and all liens, encumbrances, easements, and restrictions, except for general real estate taxes for the year of Closing and subsequent years not yet due and payable, and such other exceptions as may be approved by Purchaser pursuant to the terms hereof.

3.4 Seller at Purchaser's expense shall within twenty (20) days after the execution of this Agreement cause to be issued to Purchaser in the full amount of the Purchase Price a current title commitment (the "Title Binder") for an owner's title insurance policy (providing ALTA Form B coverage or equivalent, if available), through a Purchaser approved title company (the "Title Company") setting forth the state of title of the Property and all exceptions, including easements, restrictions, rights-of-way, covenants, reservations and other conditions, if any, affecting the Property, together with true, correct and legible copies of all recorded instruments creating or evidencing such matters. In the event any exceptions appear in any such Title Binder other than the standard printed exceptions (which shall be modified in the owner's title policy as specified in Section 4.2.2 hereof), which are unacceptable to Purchaser, in Purchaser's sole discretion, then Purchaser shall notify Seller in writing of such fact. Seller shall have thirty (30) days to eliminate or modify such unacceptable exceptions to the reasonable satisfaction of Purchaser. In the event Seller shall not eliminate or modify such unacceptable exceptions at or prior to Closing, Purchaser may terminate this Agreement by notice in writing, or Purchaser may accept such title as Seller can deliver. Except as provided in the next sentence hereof, matters described upon such Title Binder and not objected to by Purchaser within thirty (30) days of receipt of Title Binder shall be deemed "Permitted Exceptions." Notwithstanding the foregoing, unless Seller and Purchaser have otherwise expressly agreed to the contrary, no lien (whether voluntary or involuntary) other than the lien securing general real estate taxes and special assessments not yet due and payable, shall be considered a Permitted Exception hereunder and Seller hereby agrees to cause the Property to be released from all such liens on or before Closing, whether or not Purchaser objects to same.

3.5 Seller shall cooperate with Purchaser in obtaining, at Purchaser's expense, a current survey of the Property (the "Survey") prepared and certified by a land surveyor duly licensed in the State of Kansas. The Survey shall be staked on the ground and the plat of such Survey shall be to scale accuracy and shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks or other water courses, fences, easements and rights-of-way on or adjacent to the Property, if any, as well as all easements, set-backs, rights-of-way, and other such matters, labeled with recording references to any recorded instruments evidencing or creating the same, and shall contain the surveyor's certification to Purchaser and to the Title Company that it is correct and that there are no discrepancies, conflicts, encroachments, protrusions,

overlapping of improvements, easements or rights-of-way (visible or recorded), except as shown, and shall set forth the number of total square feet comprising the Property, together with metes and bounds description thereof. The terms "total square feet" (or "total square footage") shall for purposes of this Agreement mean the number of square feet contained in the Property, without exclusion of any land lying within the right-of-way lines of any alley, street or road or similar present or proposed public right-of-way, railroad, creek, river and other water course, or within the boundaries of any easement.

3.6 From and after the date hereof, Purchaser may investigate all aspects of the Property, including without limitation, a due diligence environmental investigation and such other investigations as Purchaser may elect. Seller agrees to cooperate fully in the investigation by making available its officers, employees, correspondence and all records relating to, or information in connection with the Property. In this connection, Purchaser or its designated agents may enter upon the Property and conduct such tests which may be deemed advisable by Purchaser or its engineer(s). Within thirty (30) days from the date Purchaser obtains the Survey, the Title Binder and all recorded instruments referred to therein to Purchaser, and Purchaser has received the results of all studies made on the Property, and as a condition to Purchaser's obligations hereunder, Purchaser shall determine whether the Property is suitable for Purchaser's intended use and in all other aspects satisfactory to Purchaser, and in the event Purchaser, in its sole judgment, determines that the Property is not suitable for the use(s) Purchaser intended, or if the Survey should show the Property is not as legally described herein, then Purchaser shall be entitled to terminate this Agreement.

3.6.1 To the extent permitted by law and subject to the provisions of the Kansas Tort Claims Act, Purchaser shall indemnify and hold Seller harmless from and against any mechanics liens or claims thereof that may be filed or asserted against Seller by the surveyors, contractors, subcontractors and/or materialmen performing such tests and inspections at the request of Purchaser.

3.6.2 Purchaser shall require Purchaser's agents to provide proof of insurance in an amount not less than One Million Dollars (\$1 Million) to defend Purchaser and Purchaser's agents from any claim, suit or damage arising out of Purchaser's or Purchaser's agent's negligent acts related to entry upon Seller's property or performance of the activities contemplated in this paragraph. Purchaser also agrees to restore the Property and/or Seller's personal property as near as practicable to its original condition after the conclusion of any such test or operation contemplated in this paragraph.

3.6.3 In the event Purchaser elects to terminate this Agreement for any reason, including but not limited to existing or pre-existing environmental conditions Seller agrees to indemnify, defend, and hold harmless Purchaser from and against any claims whatsoever relating to the Property.

3.7 Seller shall have obtained release of the Property from all mortgage indentures.

IV. CLOSING AND POSSESSION

4.1 Closing shall take place on or before July 1, 2011, ("Closing Date"). Seller shall deliver exclusive possession of the Property to Purchaser August 1, 2011, ("Possession Date"). Seller acknowledges that they are entitled to ninety (90) days to consider the offer to purchase. Notwithstanding those rights Seller desires to transfer ownership of the Property on the Closing Date. Seller further acknowledges that the Possession Date is at least thirty (30) days after delivery of the purchase consideration to Seller by Purchaser. Seller understands that Purchaser is allowing Seller, or their tenants or lessees, to remain in residence on the Property through the Possession Date, but Purchaser in no way guarantees the habitability of the Property and has no obligation to the Seller should the Property become uninhabitable prior to the Possession Date.

4.2 At the Closing, Seller shall:

4.2.1 Deliver to Purchaser a duly executed and acknowledged Deed conveying good and marketable title in fee simple to all of the Property, including all air and mineral rights connected therewith, free and clear of any and all liens, encumbrances, easements, leases and restrictions, except for general real estate taxes and special assessments for the year of Closing and subsequent years, not yet due and payable, and any Permitted Exceptions.

4.2.2 Unless otherwise expressly set forth herein, deliver to Purchaser an Owner's Title Policy giving ALTA Form B coverage or local equivalent at Purchaser's expense issued through the Title Company, in Purchaser's favor, in the full amount of the Purchase Price, insuring Purchaser's fee simple title to the Property subject only to the Permitted Exceptions, and the standard printed exceptions contained in the usual form of ALTA Form B Owner's Title Policy; provided however, that the boundary and survey exceptions shall be deleted, to the extent permitted by law (and the Survey shall be updated at Purchaser's expense if required by the Title Company) the exception as to restrictive covenants shall be endorsed "None of Record," and the exception as to the lien for taxes shall be limited to the year of Closing and shall be endorsed "Not Yet Due and Payable."

4.3 At the Closing, Purchaser shall pay the Purchase Price in cash.

4.4 The parties agree that all of the following which become due and accrue during the calendar year in which Seller's Deed is delivered shall be prorated between the parties as of the day of Closing and, for all years thereafter, all of the following, to the extent permitted by applicable law, shall be assumed and paid by Purchaser: interest on existing loans to be assumed by Purchaser, all general/state/county/school and municipal real estate taxes, homes association dues and fees, special assessments and any other contractual obligations of Seller to be assumed by Purchaser. If the amount of any item to be prorated for the current year cannot be ascertained from the public record, the amount of the item for the preceding year will be used for the current year's amount. However, if the preceding year's taxes were based on a lesser improved Property, taxes will be computed and prorated based on the preceding year's mill levy at

the current assessed value, if ascertainable. The parties agree that if the Property has been reappraised or reclassified within the preceding year and the actual taxes based on the new value are not available, they will agree to a reasonable estimation of the current year's taxes based on the information available on the day of Closing. Seller shall pay all transfer taxes, documentary and recording fees and similar charges imposed upon the transfer of the Property unless applicable law requires payment of same by Purchaser.

4.5 On the Possession Date, Seller shall deliver to Purchaser exclusive possession of the Property. The Property shall be fully secured and all keys delivered to Purchaser on Possession Date.

V. SELLER AS A DISPLACED PERSON

5.1 The parties acknowledge and agree that Seller is a "displaced person" as defined in the federal Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, 42 U.S.C. Section 4601, *et seq.*, its implementing regulations at 49 C.F.R., Part 24, and K.S.A. 58-3501, *et seq.* The parties acknowledge and agree that Purchaser complied with the laws related to displaced persons including but not limited to tendering a separate written letter and other written documents describing Seller's eligibility for relocation benefits and assistance.

VI. ASSIGNMENT OF AGREEMENT

6.1 Purchaser may not assign this Agreement without Seller's written consent.

VII. CONDEMNATION

7.1 In the event that any condemnation, partial or total is instigated by any governmental subdivision prior to the Closing of this purchase, then in such event this Agreement shall be terminated and all deposits shall be returned to Purchaser. Purchaser shall disclaim any right to any condemnation proceeds.

VIII. HAZARDOUS WASTE OR SUBSTANCES

8.1 To the best of its knowledge, Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and regulations of all governmental authorities having jurisdiction with respect to the Property and hereby warrants that to the best of Seller's knowledge no portion of the Property or of any tract in the immediate area of the Property has been used as a site for storage, treatment or disposal of, or been the location of the spill or leakage of any hazardous or noxious substances or petroleum substances and/or any waste or recycled products thereof (as such substances are defined by applicable state or federal regulations as of the date of this Agreement.) Without limitation of the foregoing, Seller has exercised due diligence in determining that the Property and its owner and/or operators thereon are not (i) currently in violation of any existing, pending or threatened investigation or inquiry by any governmental authority; or (ii) in receipt of any notice of any liability under any applicable laws pertaining to health or the environment, including, without limitation, the Superfund Amendments and Reauthorization Act of 1986, the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980 as amended (42 USC 9601 *et seq.*) and the Solid Waste Disposal Act, as amended (42 USC 6901 *et seq.*); or (iii) subject to any notice of any pending or prior claims or litigation concerning the Property of which Seller has actual or constructive notice. Seller agrees to assign to Purchaser any rights Seller may have under any state, federal or local environmental laws, regulations, funds (including but not limited to the Kansas Underground Storage Tank Trust Fund) or common law, and any rights Seller may have under any existing or pre-existing form of insurance, including but not limited to pre-existing comprehensive liability insurance policies that may not exclude environmental matters, if any claim against Purchaser shall be forthcoming as the result of any existing environmental condition on the Property.

IX. DISCLOSURE

9.1 Seller acknowledges that this transaction has not been negotiated or facilitated by a realtor, and no commission is to be paid therefore. Seller and Purchaser each agree to indemnify and hold the other party harmless against and from any claimed real estate commission or finder's fee asserted against the indemnifying party as a result of this transaction.

X. UTILITIES/MAINTENANCE/CASUALTY LOSS

10.1 Seller agrees to leave all utilities on until the Possession Date unless otherwise agreed. Seller agrees to perform ordinary and necessary maintenance, upkeep and repair to the Property and to keep the improvements on the Property fully insured until the Possession Date. If prior to the Possession Date, the Property is damaged or destroyed by fire or other causes including those that could be covered by fire and extended coverage insurance, the parties agree that the risk of that damage or destruction shall be borne in the following manner. If the damage is minor, Seller shall upon request of Purchaser repair or replace the Property, if the work can be completed before the Possession Date. If the damage is substantial, Seller shall notify Purchaser in writing and Purchaser may enforce or cancel this Agreement by written notice to Seller after receiving notice of the damage or destruction of the Property. If Purchaser elects to enforce this Agreement, the Purchase Price shall not be reduced and the Property shall be conveyed in its existing condition at the time, provided Seller shall credit Purchaser the insurance deductible and assign Seller's fire and extended coverage proceeds to Purchaser at Closing.

XI. DEFAULT AND REMEDIES

11.1 Seller or Purchaser shall be in default under this Agreement, if either fails to comply with any material covenant, agreement, or obligation within the time limits required by this Agreement. Following a default by either Seller or Purchaser, the parties may pursue any remedies or damages available to them at law or in equity.

XII. MISCELLANEOUS

12.1 Seller agrees to hold harmless, indemnify and defend the Purchaser, its employees and elected officials against all liability for injury to persons or damage to Property which may occur between the Closing Date and the Possession Date.

12.2 Seller at Purchaser's expense shall purchase and maintain through the Possession Date, an Owner's or Renter's Liability Insurance Policy in a minimum amount of \$100,000 per occurrence and shall provide the Purchaser with a certificate of insurance evidencing the same.

12.3 Seller shall have the right, until the Possession Date, to salvage and retain any or all personal property and equipment located on the Property, so long as the Property and any improvements remain insured and the salvage does not affect the habitability of improvements thereon.

12.4 This Agreement embodies the entire agreement between the parties and cannot be varied except by the written agreement of the parties.

12.5 Time is of the essence of this Agreement.

12.6 Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address set forth below.

To Purchaser:
William D. Brown
Director of Public Works
City of Overland Park, Kansas
8500 Santa Fe Drive
Overland Park, KS 66212

With a copy to:
Tammy M. Owens
Senior Assistant City Attorney
City of Overland Park, Kansas
8500 Santa Fe Drive
Overland Park, KS 66212

To Seller – Pre-Possession Date:
W. S. Franz and Mary S. Franz
11750 W. 159th Street
Olathe, KS 66062

To Seller – Post-Possession Date:
W. S. Franz and Mary S. Franz
6838 W. 156th Terrace
Overland Park, KS 66223

12.7 All of the terms and conditions of this Agreement are hereby made binding on the executors, heirs, administrators, successors and permitted assigns of both parties hereto.

12.8 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

12.9 The captions used in connection with articles of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language of this Agreement.

12.10 This Agreement shall be construed and governed by the laws of the State of Kansas.

12.11 Following Closing, Seller and Purchaser shall remain liable to perform all of their respective obligations herein set forth and not performed on or before Closing and such obligations shall not "merge" into documents and other instruments delivered at Closing by operation of law or otherwise. Likewise, all representations and warranties set forth in this Agreement shall survive Closing.

12.12 Seller represents and warrants to Purchaser that, as of the Possession Date, there will be no parties in possession of any portion of the Property as lessees, tenants at sufferance or trespassers, the Property is not the subject of any executory contract of sale, or other agreement to sell the Property to a third party.

12.13 Purchaser agrees that in the event this Agreement is terminated by Purchaser as a matter of Purchaser's rights under this Agreement, then in such event any surveys, core drilling reports, soil sample reports or any other information obtained as a part of Purchaser's due diligence or as a result of tests performed under Article III hereof, shall become the property of Seller.

The remainder of this page has intentionally been left blank.

EXECUTED this _____ day of _____, 2011, by Seller.

W. S. Franz

Mary S. Franz

Signature

Signature

EXECUTED this _____ day of _____, 2011, by Purchaser.

THE CITY OF OVERLAND PARK

Carl Gerlach
Mayor

ATTEST:

APPROVED AS TO FORM:

Marian Cook
City Clerk

Tammy Owens
Senior Assistant City Attorney

Tract 4 Overall Record Property Description
159th Street (Quivira to Antioch)
Affinis Corp No. 07-0692-03
6/15/2011

Exhibit "A"

Property Description

The East 264 feet of the West 660 feet of the South 330 feet of the Southwest Quarter of Section 11, Township 14, Range 24, Overland Park, Johnson County, Kansas, except part in roads.



The description shown on this page is as written in a Kansas Warranty Deed conveying property to W. S. Franz and Mary S. Franz, husband and wife, recorded October 17, 1996, in Book 5015, at Page 776, at the Johnson County, Kansas, Register of Deeds Office, and has been reviewed for typographical correctness as compared to the Warranty Deed by me on this day of June 15, 2011.

Robert L. Ubben, KS LS#1247
Affinis Corp.
7401 W. 129th St., Suite 110
Overland Park, Kansas 66213

EXHIBIT B

Tract 4
TH-0870
159th Street – Quivira to Antioch

KANSAS WARRANTY DEED

This Indenture, made this _____ day of _____, 2011, by and between **W. S. Franz and Mary S. Franz, husband and wife**, Johnson County, in the State of **Kansas**, parties of the first part, and the City of Overland Park, Johnson County, in the State of Kansas, party of the second part.

WITNESSETH: THAT SAID PARTIES OF THE FIRST PART, in consideration of the sum of \$10.00 dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, do by these presents, Grant, Bargain, Sell and Convey unto the party of the second part, its successors and assigns, all the following described real estate, situated in the County of Johnson, State of Kansas, to wit:

SEE EXHIBIT 'A'

TO HAVE AND TO HOLD THE SAME, Together with all and singular the tenements, herditaments and appurtenances thereunto belonging or in any wise appertaining, forever. And said parties of the first part, for their heirs, executors or administrators, do hereby covenant, promise and agree to and with said party of the second part, that at the delivery of these presents they are lawfully seized in their own right of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances, that the same are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances, of what nature or kind so ever and that they will warrant and forever defend the same unto the party of the second part, its successors and assigns, against the parties of the first part, their heirs, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

