# OPTION AGREEMENT

This Agreement is made and entered into to be effective as of the _____ day of _____, 2000 (the "Effective Date"), by and between TAC REALTY, INC., a Texas corporation (hereinafter referred to as "TAC"), and THE CITY OF COLLEGE STATION, TEXAS (hereinafter referred to as the "City").

## RECITALS:

A. Subject to the terms of this Agreement, TAC desires to grant to the City, and the City desires to obtain from TAC, an option to acquire certain real property (the "Option Property") in Brazos County, Texas, containing approximately nine (9) acres, which Option Property is more particularly described on Exhibit "A", attached hereto and made a part hereof.

B. TAC and the City desire to confirm the applicable terms and conditions relative to such option.

## AGREEMENT:

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, TAC and the City hereby agree as follows:

1. Grant of Option. Subject to the terms and conditions set forth in this Agreement, TAC hereby grants and conveys to the City an irrevocable option (the "Option") to acquire the Option Property. In consideration for the Option, the City shall deliver to TAC, contemporaneously with the execution of this Agreement, the sum of $10 cash.

2. Term. The Option shall extend for a period (the "Option Period") commencing on the Effective Date and ending on November 1, 2003 (the "Expiration Date"). In the event the City fails to exercise the Option on or before the Expiration Date, the Option shall automatically expire, and neither TAC nor the City shall have any further rights or obligations under this Agreement.

3. Exercise of Option. The Option may be exercised by the City at any time during the Option Period. The City shall exercise the Option by delivering written notice of such exercise to TAC. Within ten (10) business days after the valid and timely exercise of the Option by the City, TAC and the City shall enter into a Contract of Sale (the "Contract") with respect to the Option Property, which Contract shall be in substantially the form of Exhibit "B", attached hereto and made a part hereof; provided, however, that the provisions of Paragraph 5 of the Contract shall be revised, if necessary, to accurately reflect the knowledge of TAC as of the date of execution of the Contract. Upon execution of the Contract, this Agreement shall be of no further force and effect, and the terms and conditions of the sale of the Option Property by TAC to the City shall thereafter be controlled and governed by the Contract.

4. Additional Encumbrances. The City acknowledges, as more particularly set forth in the Contract, that TAC intends to encumber the Option Property with certain agreements and restrictions prior to conveyance of the Option Property to the City. Encumbrance of the Option Property with such agreements and restrictions shall in no way constitute a breach or default by TAC under the terms of this Agreement or the Contract. Such restrictions and encumbrances shall include, without limitation, provisions restricting use of the Option Property to a public performing arts center and other public purposes reasonably related to the use thereof.

5. Recordation. The City agrees that the City shall not be entitled to record this Agreement in the Deed Records, the Official Records, or the Real Property Records of Brazos County, Texas. However, TAC agrees that, at the request of the City, TAC shall execute, acknowledge, and deliver to the City a Memorandum of Option in the form of Exhibit "C", attached hereto and made a part hereof, which the City shall be entitled to record in the Real Property Records of Brazos County, Texas. If the City fails to timely exercise the Option prior to the Expiration Date, the City agrees to promptly execute, acknowledge and deliver to TAC a release of such Memorandum of Option in form reasonably acceptable to TAC.

6. Assignment. This Agreement shall not be assigned by the City without the prior written consent of TAC, which consent may be granted or withheld for any reason or for reason; provided, however, that TAC agrees not to withhold its consent to assignment of this Agreement by the City to the Performing Arts Center of the Brazos Valley or its designated successor, affiliate, or subsidiary. Consent by TAC to any assignment of this Agreement shall not constitute consent to any other assignment; and any such other assignment shall be subject in all respects to the consent of TAC, as set forth in the immediately preceding sentence.

7. Miscellaneous.

(a) Notices. All notices, demands, and requests and other communications required or permitted hereunder shall be in writing, and shall be deemed to be delivered when actually received or, if earlier and regardless whether actually received or not, upon deposit in a regularly maintained receptacle for the United States mail, registered or certified, postage prepaid, addressed to the addressee as follows:

If to TAC:

TAC Realty, Inc.
1111 Briarcrest Drive, Suite 300
Bryan, Texas 77802
Attention: Donald A. Adam

With a copy to:

Paul S. Darmitzel
The Adam Corporation/Group
1111 Briarcrest Drive, Suite 300
Bryan, Texas 77802

If to the City:

Kim M. Foutz
Director of Economic Development
City of College Station
1101 Texas Avenue
College Station, Texas 77842

With a copy to:

Harvey Cargill, Jr.
City Attorney
City of College Station
1101 Texas Avenue
College Station, Texas 77842

For purposes of this Agreement, TAC and the City agree that a facsimile counterpart bearing the signature of any party to this Agreement shall, absent manifest evidence of fraud, be binding upon such party when actually delivered to the other party hereto.

For purposes of this Agreement, TAC's facsimile number shall be (979)776-6288; and the City's facsimile number shall be (979)764-3481.

(b) Entirety and Amendments. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Option Property, and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

(c) Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable; the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Agreement; and the remaining provisions of the Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

(d) Parties Bound. This Agreement shall be binding upon and inure to the benefit of TAC and the City, and their respective heirs, personal representatives, successors and assigns.

(e) Headings. Headings used in this Agreement are used for reference purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

(f) Construction. This Agreement and any exhibits hereto shall be construed without the aid of any canon or rule of law requiring interpretation against the party drafting or causing the drafting of an agreement or the portions of an agreement in question.

(g) Multiple Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument, regardless of whether or not the signatures of all of the parties hereto appear on any single counterpart hereof.

(h) Time. Time is of the essence of this Agreement.

(i) Business Days. If the final day of any period or any date of performance under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

(j) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any action arising hereunder shall be in Brazos County, Texas.

IN WITNESS WHEREOF, TAC and the City have executed this Agreement to be effective for all purposes as of the Effective Date.

**TAC:**

TAC REALTY, INC., a Texas corporation

By: _____
Donald A. Adam
Chief Executive Officer

**THE CITY:**

THE CITY OF COLLEGE STATION, TEXAS

By: _____
Lynn McIlhaney, Mayor

ATTEST:

_____
Connie Hooks, City Secretary

APPROVED:

_____
Tom Brymer, City Manager

_____
Charles Cryan, Director of Finance

_____
Harvey Cargill, Jr., City Attorney

# EXHIBIT "A"

(Legal Description of Option Property)

Being approximately nine (9) acres of real property in Brazos County, Texas, which is depicted on Schedule I, attached hereto and made a part hereof. Such real property is located near the southeast corner of the intersection of University Drive (FM 60) and Copperfield Drive.

## SCHEDULE I

(Depiction of Option Property)

This Schedule I shall be mutually agreed upon in writing by TAC and the City.

# EXHIBIT "B"

## CONTRACT OF SALE

THIS CONTRACT OF SALE (the "Contract") is made and entered into as of the _____ day of _____, _____, by and between TAC REALTY, INC., a Texas corporation (hereinafter, whether one or more, referred to as "Seller"), and THE CITY OF COLLEGE STATION, TEXAS (hereinafter, whether one or more, referred to as "Purchaser").

**WITNESSETH:**

1. Property. Subject to the terms and provisions of this Contract, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, (i) 9 acres of real property (the "Land") located in Brazos County, Texas, more particularly described on Exhibit "A" which is attached hereto and made a part hereof for all purposes, (ii) all of the right, title and interest of Seller to all site plans, surveys, soil and substrata studies, architectural drawings, plans and specifications, engineering plans and studies, floor plans, landscape plans and other plans or studies of any kind that relate to the Land which are in the possession or under the control of Seller, and (iii) all other rights, privileges and appurtenances owned by Seller and in any way relating to the above-described properties. All of the above-described properties are hereinafter collectively referred to as the "Property."

2. Purchase Price. The total purchase price for the Property (the "Purchase Price") shall be the sum of One Dollar ($1.00). The Purchase Price shall be payable in cash at Closing (as hereinafter defined).

3. Earnest Money Deposit. Within two (2) business days after the date of this Contract, Purchaser shall deliver the sum of Ten Dollars ($10.00) (hereinafter referred to as the "Deposit"), to Seller. If the Contract is consummated, the Deposit shall be returned to Purchaser. In the event of default hereunder by Purchaser, the Deposit shall be applied as provided in Paragraph 11 hereof. In the event of a Permitted Termination (as defined in Paragraph 11(a) hereof), the Deposit shall be returned to Purchaser.

4. Conditions Precedent. Purchaser's obligation to close the sale and purchase hereunder is subject to the following conditions precedent:

(a) Survey. Within thirty (30) days from the date of this Contract, Seller, at its sole expense, shall cause to be delivered to Purchaser and the Title Company a current or currently recertified survey of the Land (hereinafter referred to as the "Survey"), and a field note description thereof, prepared and certified as to all matters shown thereon by a licensed professional engineer or surveyor acceptable to the Title Company. The Survey shall locate accurately (and identify by volume and page reference, if applicable) all existing buildings, improvements, fences, encumbrances, encroachments, conflicts, protrusions and uses (including the location of all highways, streets, roads, easements, alleys and rights-of-way upon or adjacent to the Land) which are visible on the ground or listed as exceptions to title in the Title Binder, as hereinafter defined; and shall recite the exact area of the Land. The Survey shall contain a certificate specifically verifying that (i) the Survey was made on the ground of the Land, (ii) the Survey is correct, and (iii) there are no improvements, visible easements or uses, encroachments, conflicts or protrusions except as shown on the Survey. The Survey shall also show any portions of the Land falling within any flood plain area or within an area designated as having special flood hazards by any official of any federal, state or local government or any instrumentality thereof and shall contain a certificate that no portion of the Land falls within any such area except if and as shown on the Survey.

(b) Title to Land. Within thirty (30) days from the date of this Contract, Seller, at its sole expense, shall cause the Title Company to furnish to Purchaser (i) a current commitment for Owner Policy of Title Insurance (hereinafter referred to as the "Title Binder") setting forth the state of title to the Land and committing the Title Company to issue to Purchaser the Owner Policy of Title Insurance described in Paragraph 9(b)(ii) below, and (ii) legible true copies of all documents referred to in the Title Binder as exceptions to title or otherwise constituting exceptions to title (hereinafter referred to as the "Underlying Documents").

(c) Review of Survey and Title. Purchaser shall have a period (the "Title Review Period") of thirty (30) days from the date of actual receipt by Purchaser of the Survey, the Title Binder and the Underlying Documents within which to review and give Seller written notice of its objection to the condition of title reflected by the Survey, the Title Binder and the Underlying Documents; and the Title Review Period shall not commence until receipt by Purchaser of all of such items. With regard to any objection so made by Purchaser, Seller shall use its reasonable good faith efforts to remedy such objection, but Seller shall not be obligated to pay any sum of money to any third party as any inducement to remove an objection to title other than an objection to a lien against the Land. If Seller is unable to cure such objections on or prior to Closing, Purchaser may, at its option, (i) accept such title as Seller can deliver, or (ii) terminate this Contract by notice in writing to Seller and receive back the Deposit, save and except $5.00 of the Deposit, which shall be retained by Seller. In the event Purchaser fails to furnish Seller, on or before the end of the Title Review Period, either (i) notice that the Survey, the Title Binder and the Underlying Documents were satisfactory, or (ii) notice of Purchaser's objections to the Survey, the Title Binder and/or the Underlying Documents, this Contract shall terminate, and thereupon Seller shall return the Deposit to Purchaser, save and except $5.00 of the Deposit, which shall be retained by Seller, and neither Purchaser nor Seller shall have any further rights or obligations hereunder.

(d) Inspection of Property. Purchaser and its agents and duly authorized representatives shall have the right to inspect the condition of the Land and the books and records of Seller pertaining thereto (including, without limitation, any environmental studies in Seller's possession) during reasonable business hours. Seller hereby agrees to give Purchaser its reasonable cooperation and to confirm when requested by Purchaser the veracity of the information relied upon by Purchaser.

Purchaser shall have a period (the "Review Period") of one hundred twenty (120) days from the date of this Contract within which to review and give Seller written notice of its objection to the condition of the Property (subject to Purchaser's right to extend the Review Period as hereinafter provided). In the event that such inspection indicates that the Property is not satisfactory to Purchaser, in Purchaser's sole and absolute discretion, Purchaser may, at its option, terminate this Contract by notice in writing to Seller and receive back the Deposit, save and except $5.00 of the Deposit, which shall be retained by Seller. In the event Purchaser fails to furnish Seller, on or before the end of the Review Period, either (i) notice that the inspection was satisfactory, or (ii) notice of Purchaser's objections pursuant to such inspection, this Contract shall terminate, and thereupon the Title Company shall return the Deposit to Purchaser, save and except $5.00 of the Deposit, which shall be retained by Seller, and neither Purchaser nor Seller shall have any further rights or obligations hereunder.

5. Representations of Seller.

Seller hereby represents to Purchaser that the facts recited below are true and accurate and that if prior to the closing date Seller discovers that one or more of such facts are untrue or inaccurate it will inform Purchaser in writing of its discovery. The obligation of Purchaser to consummate this transaction shall be contingent upon the lack of any material variance with respect to the truth and accuracy of all such facts as of the date scheduled for closing, notwithstanding the fact that, with respect to representations or warranties made to the best of Seller's knowledge, Seller had no knowledge of the untruth or inaccuracy of such facts. It is expressly agreed that no examination or investigation of the Property or of the operational information pertaining thereto by or on behalf of Purchaser shall in any way modify, affect or diminish the representations and warranties of Seller contained herein, and that such representations and warranties of Seller shall survive closing except to the extent that Seller gives Purchaser written notice prior to closing of the untruth or inaccuracy of any representation or warranty, or Purchaser otherwise obtains actual knowledge prior to closing of the untruth or inaccuracy of any representation or warranty, and Purchaser nevertheless elects to close this transaction. In accordance with the immediately preceding sentences, Seller represents to Purchaser as follows:

(i) Subject to the terms of Paragraph 7 hereof, on the date of Closing, Seller will have good and indefeasible title to the Property, subject only to the exceptions permitted hereunder and liens and encumbrances to be released and discharged at the Closing hereunder, and will have full right, power and authority and will have taken all requisite action to enter into this Contract and to sell and convey the Property to Purchaser as provided in this Contract and to carry out its obligations as set forth hereunder.

(ii) To the best current actual knowledge of Seller, without independent inquiry, there is no action, suit, proceeding or claim affecting Seller or the Property or any portion thereof relating to or arising out of the ownership, operation, use or occupancy of the Property pending or being prosecuted in any court or by or before any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality nor, to the best knowledge of Seller, is any such action, suit, proceeding or claim threatened or being asserted.

(iii) To the best current actual knowledge of Seller, without independent inquiry, there is no pending condemnation or similar proceeding affecting the Property or any portion thereof, and Seller has not received any written notice and has no knowledge that any such proceeding is contemplated.

(iv) Seller has received no notice and otherwise has no current actual knowledge, without independent inquiry, of any pending improvement liens or special assessments to be made against the Property by any governmental authority.

(v) Except as set forth in Paragraph 7 hereof, no consent or approval of any person, entity or governmental agency or authority is required with respect to the execution and delivery of this Contract by Seller or the consummation by Seller of the transactions contemplated hereby or the performance by Seller of its obligations hereunder.

(vi) There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any debtor relief laws contemplated or filed by Seller or pending against Seller.

(vii) There are no options, contracts or other obligations outstanding for the sale, exchange or transfer by Seller of the Property or any portion thereof.

(viii) Seller is not and has never been a "foreign person" within the meaning of Sections 1445(f)(3) and 7701(a)(30) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(ix) To the best current actual knowledge of Seller, without independent inquiry, no portion of the Property has been affected by the introduction, spillage, release, discharge or disposal of asbestos or any pollutant or hazardous or toxic material.

6. Conditions Precedent to Purchaser's Obligations. The following shall be additional conditions precedent to Purchaser's obligations hereunder:

(a) On the date of Closing, all of Seller's representations and warranties shall be true and correct in all material respects and Seller shall have performed each covenant to have been performed by Seller hereunder within the time specified.

(b) On the date of Closing, there shall be no change in the matters reflected in the Title Binder and there shall not exist any encumbrance or title defect affecting the Property not described in the Title Binder.

(c) On the date of Closing, there shall be no change in the matters reflected in the Survey and there shall not exist any easement, right-of-way, encroachment, conflict or protrusion with respect to the Property not shown on the Survey.

(d) On the date of Closing, there shall be no litigation pending or threatened, seeking (i) to enjoin the consummation of the sale and purchase hereunder, (ii) to recover title to the Property, or any part thereof or any interest therein, or (iii) to enjoin the violation of any law, rule, regulation, restrictive covenant or zoning ordinance that may be applicable to the Property.

If any of the above-described conditions precedent to Purchaser's obligations hereunder are not satisfied, Purchaser may, at its option, (i) waive such condition and close this transaction, or (ii) terminate this Contract by notice in writing to Seller and receive back the Deposit.

7. Definitive Agreements. Seller, Purchaser and College Main, Ltd. ("College") have entered into a Memorandum of Understanding (the "Memorandum") dated as of July 13, 2000. The obligations of both Seller and Purchaser under this Contract are subject to and conditioned upon execution and delivery on or before the date of Closing of the Definitive Agreements (as such Definitive Agreements are defined and described in the Memorandum). Purchaser acknowledges that the Property is part of a larger tract of land which is to be acquired by Seller from College pursuant to a separate purchase agreement (the "Development Property Contract"), which is one of the Definitive Agreements; and notwithstanding anything to the contrary contained in this Contract, the obligations of Seller under this Contract are subject to and conditioned upon execution of the Development Property Contract and performance by College of its obligations under the Development Property Contract. Nothing contained in the Contract shall prevent, preclude or restrict Seller from terminating the Development Property Contract pursuant to any of the provisions or authorizations contained in the Development Property Contract. After the date of this Contract, but prior to the closing of this Contract, Seller may encumber the Property with certain agreements and restrictions, including, without limitation, (i) the Definitive Agreements, (ii) provisions restricting use of the Property to a public performing arts center and other public purposes reasonably related to the use thereof, and (iii) restrictions requiring prior written approval from Seller as to the design, architecture, layout, and other external characteristics of any and all buildings, structures and improvements placed or constructed on the Property, which approval shall not be unreasonably withheld; and placement of such restrictions and encumbrances on the Property shall in no way constitute a breach or default by Seller under any of the terms of this Contract or a breach by Seller of any of Seller's representations and warranties contained in this Contract.

8. Interim Responsibilities of Seller. During the period between the date of this Contract and the date of Closing, Seller hereby covenants and agrees that, except as permitted under Paragraph 7 hereof, Seller will not take any action or omit to take any action, which action or omission would have the effect of violating any of the representations and warranties of Seller contained in the Contract.

8A. Condition Precedent to Seller's Obligation to Close. Notwithstanding anything to the contrary contained in this Contract, Seller's obligation to consummate the closing of this Contract is subject to and conditioned upon delivery by Purchaser to Seller of evidence reasonably satisfactory to Seller that Purchaser has, or within the period of time necessary to avoid triggering the reversion clause to be contained in the Deed (as hereinafter described) will have, the financial ability to commence and complete construction on the Property of a public performing arts center, and the associated improvements, equipment, fixtures and personal property thereto (the "Performing Arts Center"), containing at least 37,788 square feet of gross interior floor space and having a completed cost of at least $7,000,000. In the event Purchaser fails to satisfy the conditions set forth in the immediately preceding sentence on or before the date of Closing provided for in this Contract, Seller, at Seller's sole option, shall have the right to terminate this Contract by written notice to Purchaser, whereupon the Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further rights or obligations under this Contract. Seller agrees that Seller or its designee will contribute a lead gift of at least $1,000,000 toward the costs of constructing the Performing Arts Center on the Property, which gift may be conditioned upon matched funding by other donors and upon the raising of sufficient total funds for completion of the Performing Arts Center.

9. Closing.

(a) Time and Place. Provided that all of the contingencies of this Contract shall have been fulfilled or waived prior to or on the date of Closing, the Closing of this transaction ("Closing") shall take place at the office of the Title Company, 1673 Briarcrest Drive, Suite 104B, Bryan, Texas, on the date which is thirty (30) days after the last day of the Review Period, unless postponed pursuant to the terms hereof or by mutual written agreement of the parties hereto, or on such earlier date as may be designated by Purchaser.

(b) Events of Closing. At the Closing, Seller shall deliver, or cause to be delivered, to Purchaser the following:

(i) A Special Warranty Deed (the "Deed") duly executed and acknowledged by Seller in a form satisfactory to Purchaser and sufficient to convey to Purchaser good and indefeasible fee simple title to the Land free and clear of all liens and encumbrances except for those permitted hereunder.

The Deed shall contain provisions providing that the Property will revert to Seller in the event that Purchaser does not commence construction of the Performing Arts Center on or before the date which is one (1) year after the date of Closing, or has not substantially completed construction of the Performing Arts Center on or before the date which is three (3) year(s) after the date of Closing.

(ii) An Owner Policy of Title Insurance issued by the Title Company to Purchaser, or its assignee, at the expense of Purchaser and insuring good and indefeasible title to the Land subject to no exceptions other than (a) exceptions contained in the Title Binder and approved by Purchaser prior to Closing, and (b) standard printed exceptions and other common exceptions generally included in a Texas Owner Policy of Title Insurance.

(iii) An affidavit or certificate, sworn to under penalty of perjury, executed by an authorized officer, partner or other representative of Seller, restating the representation and warranty set forth in Paragraph 5(a)(viii), setting forth Seller's address, taxpayer identification number and status (e.g., Texas corporation, United States citizen, etc.), and containing such other information as Purchaser or the Title Company may require in order to qualify for exemption from the withholding requirements by the Foreign Investors in Real Property Tax Act of 1980, as amended, and the regulations promulgated thereunder. Notwithstanding anything to the contrary contained herein, if Seller fails or refuses to deliver such affidavit or certificate to Purchaser at Closing, then the funding of the Purchase Price to Seller at Closing will be adjusted to the extent required to comply with the withholding provisions of the federal tax laws, and although the amount withheld will still be paid at Closing by Purchaser, such amount shall be retained by the Title Company for delivery to the Internal Revenue Service together with the appropriate federal tax law reporting forms (and with copies of such reporting forms being provided to both Seller and Purchaser); provided, however, that in the event such amount required to be withheld exceeds the cash portion of the Purchase Price which is payable by Purchaser at Closing, Seller's failure or refusal to deliver such affidavit or certificate to Purchaser at Closing shall constitute a default by Seller hereunder.

(iv) Possession of the Property.

At the Closing, Purchaser shall deliver to Seller the Purchase Price, in cash.

In addition, each party will provide to the other or to the Title Company, or both, whatever documentation may be reasonably requested or required in order to confirm the proper authority of such party to consummate this transaction and to issue the Owner Policy of Title Insurance described above.

(c) Expenses of Closing. With reference to Closing, it is understood and agreed that Seller shall pay the cost of tax certificates, the Survey, one-half (½) of the escrow fee charged by the Title Company, the transfer and any other fees charged by the holder or holders of the existing liens affecting the Property, recording fees for the Special Warranty Deed and its own attorneys' fees. Purchaser shall pay its appropriate share of the prorations as set forth in subparagraph (d) below, one-half (½) of the escrow fee charged by the Title Company, the premium for the Owner Policy of Title Insurance and the endorsements thereto, the premium for any Mortgagee Policy of Title Insurance, and its own attorneys' fees.

(d) Prorations. Real estate ad valorem taxes, utilities and other operating expenses, if any, shall be prorated to the date of Closing, based upon actual days involved. All utility charges and operating expenses, if any, shall be determined to the day of Closing and paid by Seller to the greatest extent practicable. If the amount of such charges and expenses is unavailable at the precise closing date, a readjustment shall be made within thirty (30) days after the Closing. In connection with the proration of real property taxes, in the event that actual tax figures for the year of Closing are not available on the closing date, an estimated tentative proration of taxes shall be made using tax figures from the preceding year; provided, however, when actual taxes for the year of Closing are available, a correct proration of taxes shall be made, and in the event that taxes for the year of Closing increase over those for the preceding year, Seller will pay Purchaser a pro rata part of such increase computed to the date of Closing. All special taxes, charges and assessments affecting the Property levied or assessed prior to the closing date shall be paid in full and discharged by Seller at Closing, even though the same may not yet be due and payable or may be payable in installments. If the sale of the Property by Seller or change in use of the Property by Purchaser can or will result in the imposition of a rollback or recapture of ad valorem taxes applicable to the Property for prior years, Seller shall have no liability to Purchaser or Purchaser's successors-in-interest with respect to such rollback or recapture. The provisions of this paragraph shall survive the Closing of this transaction and the payment of any consideration and the delivery of all closing instruments.

10. Condemnation. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Property, or any portion thereof, or any other proceedings arising out of injury or damage to the Property, or any portion thereof, Seller will notify Purchaser of the pendency of such proceedings. In the event that any condemnation proceedings affecting the Land, or any part thereof, shall be commenced or threatened prior to Closing, Purchaser may, at its option, (i) terminate this Contract by notice in writing to Seller and receive back the Deposit, or (ii) proceed to close this transaction and receive at Closing all of the right, title and interest of Seller in and to any condemnation proceeds or awards or sales price in lieu of condemnation; provided, however, that if such proceeds, awards or sales price is paid or awarded prior to Closing and the amount of such proceeds, awards or sales price exceeds $10,000 per acre, Purchaser shall pay the amount of such excess to Seller upon receipt by Purchaser. The provisions of this paragraph shall survive the Closing of this transaction and the payment of any consideration and the delivery of all closing instruments.

11. Termination, Default and Remedies.

(a) Permitted Termination. If this Contract is terminated by Purchaser because of a failure of one or more of the contingencies or pursuant to any of the authorizations herein specified (hereinafter referred

to as a "Permitted Termination"), the Deposit shall immediately be returned to Purchaser, save and except $5.00 of the Deposit, which shall be retained by Seller, and neither party shall have any further rights or obligations hereunder.

(b) Default by Purchaser. If Seller shall not be in default hereunder and the Purchaser refuses to consummate this Contract for reasons other than a Permitted Termination, Seller, as its sole and exclusive remedy, shall be entitled to receive the Deposit.

(c) Default by Seller. If Seller refuses to consummate this Contract for reasons other than a Permitted Termination, Purchaser shall immediately by entitled to receive back its Deposit. In addition, Purchaser may, at its option, elect one of the following remedies, which shall be Purchaser's sole and exclusive remedies: (i) terminate this Contract, in which event neither party shall have any further rights or obligations hereunder; or (ii) enforce specific performance of Seller's obligations under this Contract.

(d) Attorneys' Fees. If it shall be necessary for either Purchaser or Seller to employ an attorney to enforce its rights or the obligations of the other party hereunder, the non-prevailing party shall reimburse the prevailing party for reasonable attorneys' fees incurred by the prevailing party in connection with such enforcement.

12. No Brokerage Commissions. Each party hereto represents to the other that it has not authorized any broker or finder to act on its behalf in connection with the sale and purchase hereunder and that it has not dealt with any broker or finder purporting to act on behalf of any other party. Each party hereto hereby indemnifies and holds harmless the other party from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Contract or the transaction contemplated hereby.

13. Miscellaneous.

(a) Notices. All notices, demands, and requests and other communications required or permitted hereunder shall be in writing, and shall be deemed to be delivered when actually received or, if earlier and regardless whether actually received or not, upon deposit in a regularly maintained receptacle for the United States mail, registered or certified, postage prepaid, addressed to the addressee as follows:

If to Seller:

TAC Realty, Inc.
1111 Briarcrest Drive, Suite 300
Bryan, Texas 77802
Attention: Donald A. Adam

With a copy to:

Paul S. Darmitzel
The Adam Corporation/Group
1111 Briarcrest Drive, Suite 300
Bryan, Texas 77802

If to Purchaser:

Kim M. Foutz
Director of Economic Development
City of College Station
1101 Texas Avenue
College Station, Texas 77842

With a copy to:

Harvey Cargill, Jr.
City Attorney
City of College Station
1101 Texas Avenue
College Station, Texas 77842

For purposes of this Contract, Seller and Purchaser agree that a facsimile counterpart bearing the signature of any party to this Contract shall, absent manifest evidence of fraud, be binding upon such party when actually delivered to the other party hereto. For purposes of this Contract, Seller's facsimile number shall be (979)776-6288; and Purchaser's facsimile number shall be (979)764-3481.

(b) Entirety and Amendments. This Contract embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Property, and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

(c) Invalid Provisions. If any provision of this Contract is held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable; the Contract shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Contract; and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Contract. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Contract a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

(d) Parties Bound. This Contract shall be binding upon and inure to the benefit of Seller and Purchaser, and their respective heirs, personal representatives, successors and assigns.

(e) Further Acts. In addition to the acts recited in this Contract to be performed by Seller and Purchaser, Seller and Purchaser agree to perform, or cause to be performed, on or after Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

(f) Assignment. This Agreement may not be assigned by Purchaser without the prior written consent of Seller, which consent may be granted or withheld by Seller for any reason or for no reason.

(g) Headings. Headings used in this Contract are used for reference purposes only and do not constitute substantive matter to be considered in construing the terms of this Contract.

(h) Construction. This Contract and any exhibits hereto shall be construed without the aid of any canon or rule of law requiring interpretation against the party drafting or causing the drafting of an agreement or the portions of an agreement in question.

(i) Multiple Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument, regardless of whether or not the signatures of all of the parties hereto appear on any single counterpart hereof.

(j) Survival. Except as otherwise expressly provided herein, all representations, warranties, covenants and agreements of Seller herein shall survive the Closing of this Contract.

(k) Time. Time is of the essence of this Contract.

(l) Business Days. If the final day of any period or any date of performance under this Contract falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

(m) Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action arising hereunder shall be in Brazos County, Texas.

**SELLER:**

TAC REALTY, INC., a Texas corporation

By: _____
Donald A. Adam, Chief Executive Officer

**PURCHASER:**

THE CITY OF COLLEGE STATION, TEXAS

By: _____
Lynn McIlhaney, Mayor

ATTEST:

_____
Connie Hooks, City Secretary

APPROVED:

_____
Tom Brymer, City Manager

Charles Cryan, Director of Finance

Harvey Cargill, Jr., City Attorney

**EXHIBIT "A"**
(Legal Description of Land)

Being approximately 9 acres of real property in Brazos County, Texas, which is more particularly described as follows:

[metes and bounds description to be provided]

## EXHIBIT "C"

## MEMORANDUM OF OPTION

STATE OF TEXAS §

COUNTY OF BRAZOS §

THIS MEMORANDUM OF OPTION ("Memorandum") is made and entered into as of the _____ day of _____, _____, by and between TAC REALTY, INC., a Texas corporation ("Optionor"), and THE CITY OF COLLEGE STATION, TEXAS ("Optionee").

Optionor and Optionee have entered into an Option Agreement dated _____, _____, pursuant to which Optionor granted Optionee an option to purchase the real property in Brazos County, Texas, which is more particularly described on Exhibit "A", attached hereto and made a part hereof for all purposes.

This Memorandum shall, unless sooner terminated by default or other termination of the Option Agreement, expire and be of no further force and effect at midnight on _____, _____.

IN WITNESS WHEREOF, Optionor and Optionee have executed this Memorandum as of the day and year first written above.

**OPTIONOR:**

TAC REALTY, INC., a Texas corporation

By: _____
Name: _____
Title: _____

**OPTIONEE:**

THE CITY OF COLLEGE STATION, TEXAS

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

This instrument was acknowledged before me on this the _____ day of _____, _____, by _____, _____ of TAC REALTY, INC., a Texas corporation, on behalf of said corporation.

_____
NOTARY PUBLIC, STATE OF TEXAS
Notary's Printed Name: _____
My commission expires: _____

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

This instrument was acknowledged before me on this the _____ day of _____, _____, by _____, _____ of THE CITY OF COLLEGE STATION, TEXAS.

_____
NOTARY PUBLIC, STATE OF TEXAS
Notary's Printed Name: _____
My commission expires: _____

# EXHIBIT "A"

(Legal Description of Property)

Being certain real property in Brazos County, Texas, which is more particularly described as follows:

[TO BE PROVIDED AT A LATER TIME]