

## **PURCHASE AGREEMENT**

This Purchase Agreement ("Agreement") is entered into by and between City of Foley, Alabama, an Alabama municipal corporation ("Seller") and HCP Pumps America, Inc. ("Purchaser"). The effective date of this Agreement (the "Effective Date") shall be the date of execution and delivery hereof by Seller and Purchaser.

### **Recitals**

**WHEREAS**, Seller owns that certain land in Baldwin County, Alabama and described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

**WHEREAS**, Purchaser desires to purchase, and Seller has agreed to sell, the Property subject to and in accordance with the terms and conditions hereof.

**NOW, THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00), the premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell and convey the Property to Purchaser, and Purchaser hereby agrees to purchase the Property from Seller.

2. Purchase Price. The purchase price for the Property shall be ONE HUNDRED THOUSAND and No/100 Dollars (\$100,000.00) (the "Purchase Price"), payable at Closing.

3. Closing. Unless otherwise agreed, the closing of the purchase of the Property ("Closing") shall take place through the offices of Gulf Shores Title Co., Inc., 100 Cove Avenue, Gulf Shores, AL 36542 (the "Title Company") on or before the date that is sixty (60) days after the Effective Date (the "Closing Date").

4. Title Approval. At its expense, Purchaser shall obtain a commitment (the "Title Commitment") issued by the Title Company for the issuance of an owner's marketable fee simple title insurance policy (the "Title Policy") on the Property in the amount of the Purchase Price. Purchaser shall have ten (10) days to review the Title Commitment and to notify Seller in writing of any objections as Purchaser may have to matters set forth in the Title Commitment which affect the feasibility of Purchaser's contemplated use of the Property. In the event any such objections are made by Purchaser; Seller shall have a period of thirty (30) days (or longer if so extended in writing by Purchaser) from the receipt of the same in order to cure such objections. Failure to cure the objections to Purchaser's satisfaction shall give Purchaser the right to:

- (a) Waive the title objections and close the sale; or
- (b) Terminate this Agreement in which event all rights and obligations between the parties shall be null and void.

Any matters reflected in the Title Commitment to which Purchaser does not timely object (the “Permitted Exceptions”) shall be deemed acceptable to Purchaser. The premiums for the Title Policy and any search fees or Title Commitment fees shall be paid by Purchaser.

5. Representations and Warranties of Seller. As a material inducement to Purchaser to execute this Agreement and to consummate the transaction made the subject hereof, Seller hereby makes the following representations and warranties to Purchaser (each of which are true and correct as of the date hereof and shall be true as of the Closing):

- (a) Seller has the full power, right and authority to enter into this Agreement, without joinder of any other person or entity.
- (b) Seller has not (i) granted any rights of first refusal, options to purchase or other similar agreements with respect to the Property which give anyone the right to purchase the Property or any part thereof, (ii) entered into any leases with respect to all or any part of the Property or any agreements which give anyone any right in the future to lease or occupy all or any part of the Property, or (iii) granted or conveyed any easement, mortgages, liens, encumbrances or other interest of any nature with respect to all or any part of the Property.
- (c) Neither the execution and delivery of this Agreement or any documents referred to herein, nor the consummation of the transaction herein contemplated, conflict with or will result in the breach of any terms, conditions or provisions of, or constitute a default under, any agreements or instruments to which Seller is a party or which otherwise affect Seller or the Property.
- (d) There are no judgments or pending legal or equitable actions or suits or administrative proceedings pending or, to the best of Seller’s knowledge, threatened against Seller with respect to the Property, and Seller is not aware of any facts which might result in such action, suit or proceeding.

The Seller’s representations and warranties set forth in this Agreement shall survive the Closing.

6. Closing Deliverables. The purchase and sale of the Property pursuant to this Agreement shall be made by the execution and delivery at the Closing of the following instruments and documents by, from and between Seller and Purchaser, as applicable:

- (a) A Statutory Warranty Deed in Alabama standard form conveying the Property to Purchaser, subject only to the lien for current ad valorem taxes and the Permitted Exceptions.
- (b) Settlement Statement prepared in accordance with this Agreement.
- (c) The Owner’s Title Policy.

- (d) A Non-Foreign Status Affidavit and Certificate in customary form to be provided by the Title Company.
- (e) Such authorizations, affidavits, organizational documents, proof of existence and good standing of Seller and other instruments as the Title Company shall require, including, without limitation, affidavits required by the Title Company to delete the standard exceptions to the Title Commitment concerning such matters as mechanic's liens, parties in possession and the gap, and such other and additional documents or instruments as may be required of Seller or Purchaser, under the terms of this Agreement, to complete the sale and purchase of the Property.

7. Additional Closing Costs and Expenses. Seller shall pay for the preparation of the Deed and Purchaser shall pay all recording and transfer fees, documentary stamps, taxes or other charges or assessments in connection with the recording of the Deed and other closing documents, as applicable. Purchaser shall the closing and escrow fee charged by the Title Company. Real estate taxes and assessments, if any, with respect to the Property shall be prorated based upon the best estimate available to the closing agent. Any proration based on an estimate will be prorated between the parties upon receipt of the actual tax bill upon the request of either party.

8. Default. Should a party breach this Agreement, or this transaction not be concluded because of the default of a party, then the other party shall have such rights or remedies as may be afforded to it by law, provided that neither party shall have the right or remedy of specific performance.

9. Commission. Seller and Purchaser warrant to each other that neither is represented by a real estate company, and no commission will be due or payable to any agent.

10. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon each of the parties hereto, and their respective successors and permitted assigns.

11. Notices. Any notices or other communications which may be required or desired to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, if sent by overnight courier service (e.g., Federal Express) or if mailed by United States certified mail, return receipt requested, postage prepaid, addressed to the respective party at the addresses set forth below. Any notice so given, delivered or made by mail shall be deemed to have been duly given, delivered or made when received at such address. Either party may change the address to which notices are to be sent to such party by written notice to the other party specifying such change of address.

12. Miscellaneous. This Agreement (and all exhibits and addenda hereto) constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements, representations or warranties with respect to the subject matter hereof, whether written or oral. This Agreement may not be changed, amended or modified in any respect whatsoever, nor may any covenant, agreement, condition, requirement, provision, warranty or obligation contained herein be waived, except in writing signed by both parties. The fact that one of the parties to this Agreement may be

deemed to have drafted or structured any provision of this Agreement shall not be considered in construing or interpreting any particular provision of this Agreement, either in favor of or against such party. This Agreement may be executed in multiple copies, each of which will for all purposes constitute one Agreement, binding on all parties. Delivery of an executed copy of this Agreement by electronic transmission (e.g. facsimile or email) shall be binding upon the parties as delivery of the original.

[Signatures are on the following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date shown below the signature of each.

**SELLER:**

**CITY OF FOLEY, ALABAMA**

By: \_\_\_\_\_  
Ralph G. Hellmich, Mayor

[SEAL]

Attest \_\_\_\_\_  
Kathryn Taylor, City Clerk

**PURCHASER:**

**HCP PUMPS AMERICA, INC.  
1723 Industrial Pkwy  
Foley, AL 36536**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: President  
Date: \_\_\_\_\_

**Exhibit “A”**

**Tax Parcel Number:** 05-54-07-35-0-000-001.006

**PPIN#:** 262998