

**AUCTION SALE PURCHASE CONTRACT**

**1. PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: Janet S. Northrup, acting solely in her capacity as Chapter 7 Bankruptcy Trustee in the matter of in re: Plant Pro, Inc, Case No. 18-36501, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, and not individually  
Address: 1201 Louisiana, 28<sup>th</sup> Floor  
City: Houston State: TX Zip: 77002  
Phone: 713-759-0818 Fax: 713-759-6834  
Email: [jnorthrup@hwa.com](mailto:jnorthrup@hwa.com), [wkitchens@hwa.com](mailto:wkitchens@hwa.com)

Buyer: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**2. PROPERTY:**

1. A. "Property" means that real property situated in Waller County, Texas, with a street address of 35830 Brumlow Road, Hempstead, Texas, 77445, and legally described on Exhibit "A" annexed hereto.

The Sales Price (as set forth in Paragraph 3 below) is not dependant upon the exact number of square feet comprising the Property. Any statement in the legal description of the Property contained in any survey or the Deed as to the area or quantity of land is not a representation that such area or quantity is correct but is made only for informational and/or identification purposes.

B. Seller will sell and convey the Property together with all improvements located thereon, and all rights and appurtenances pertaining thereto.

**3. SALES PRICE:**

A. Price \$ \_\_\_\_\_  
B. Ten Percent (10%) Buyer's Premium \$ \_\_\_\_\_  
C **Total Contract Sales Price** (sum of 3.A. and 3.B.) \$ \_\_\_\_\_

**4. INTENTIONALLY DELETED.**

## 5. EARNEST MONEY:

- A. Concurrent with the execution of this contract, Buyer shall deposit \$ \_\_\_\_\_ [10% of Sales Price;] as **NON-REFUNDABLE** earnest money (the "Deposit") with First American Title Insurance Company (the "Title Company"). Any earnest money deposited pursuant to this Paragraph 5 will be applied to the Sales Price at closing. Buyer's sole remedy for the Deposit is defined in Paragraph 15.B.(1) below.
- B. If Buyer fails to deposit the earnest money as required by this contract, then this contract will immediately terminate and be of no further force and effect.

## 6. TITLE POLICY AND SURVEY:

### A. Title Policy:

- (1) Seller, at Seller's expense, will furnish Buyer an Owners Policy of Title Insurance (the "Title Policy") issued by Title Company in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the Title Policy, subject only to those title exceptions present on the Commitment (as defined in Paragraph 6.A.(3) below.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements may be amended to read "shortages in areas" at Buyer's election and sole cost and expense.
- (3) Attached hereto as Exhibit "B" is a commitment for title insurance (the "Commitment") including legible copies of recorded documents evidencing title exceptions. Seller makes no warranty as to the completeness or accuracy of the Commitment. The Title Policy will contain as exceptions, all exceptions contained in the Schedule B to the Title Commitment, all matters reflected on the survey, if any, and all matters which are otherwise accepted by Buyer as provided for herein, and shall specifically exclude coverage for any oil, gas or other mineral interests or rights relating to the Property. Seller will have no obligation to cure any defect in title, and Buyer agrees to close the sale of the purchase contemplated hereunder, regardless of the status of title to the Property as disclosed on the Commitment.

### B. Survey:

Buyer may obtain a survey of the Property at Buyer's expense. If Buyer elects to obtain a survey, then Buyer shall deliver a copy of the survey to Seller. The survey, if any, must be made in accordance with the Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.

Buyer's acceptance of the Deed and Title Policy issued by the Title Company shall be deemed to be compliance by Seller with any requirements with respect to matters of record and conclusive of said purchaser's acceptance of the title represented thereby and as being in accordance with the obligations of Seller as set forth herein.

### C. Buyer's Objections to the Commitment and Survey:

Buyer hereby waives any and all rights it may have (whether at law, equity, or otherwise) to object to the Commitment and the survey and waives any and all rights it may have

(whether at law, equity, or otherwise) to terminate this Contract regarding the Commitment or the survey. All those matters disclosed within or on the Commitment and the survey are the "Permitted Encumbrances."

**7. PROPERTY CONDITION:**

- A. SELLER MAKES NO REPRESENTATION, WARRANTY, STATEMENT, OR OTHER ASSERTION, EXPRESS OR IMPLIED, WITH RESPECT TO THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY TO BE CONVEYED, THEIR HABITABILITY, TENANT ABILITY OR SUITABILITY FOR COMMERCIAL PURPOSES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN AS CONTAINED HEREIN AND BUYER WILL ACKNOWLEDGE THE SAME AT THE CLOSING OF THE PURCHASE OF THE PROPERTY.
- B. Buyer will take the Property **AS IS, WHERE IS**, with any and all latent and patent defects. Buyer shall be fully responsible for making its own evaluation and determination as to the condition of the Property. The Deed to be delivered by Seller shall contain a provision incorporating the limitations as to warranties and representations set forth in Addendum A. **PRIOR TO EXECUTING THIS CONTRACT, BUYER WAS AFFORDED ADEQUATE TIME AND ACCESS TO INSPECT THE PROPERTY. BUYER'S ACCEPTANCE OF THE PROPERTY IN ITS AS IS, WHERE IS, WITH ALL FAULTS CONDITION IS PARTIAL CONSIDERATION AND A SIGNIFICANT FACTOR IN THE NEGOTIATED SALES PRICE. BOTH BUYER AND SELLER, AFTER NEGOTIATION, MUTUALLY AGREED TO THE PROPERTY BEING CONVEYED IN ITS AS IS, WHERE IS CONDITION. SIMILAR LANGUAGE WILL BE INCLUDED IN THE DEED DELIVERED AT CLOSING AND ALL TERMS OF THIS PARAGRAPH 7 WILL SURVIVE CLOSING.**
- C. Buyer will acknowledge and stipulate at the closing of the purchase of the Property that having been given the opportunity to inspect the Property, said Purchaser will be relying solely on said Purchaser's own investigation and not on any information provided by Seller (except for Seller's warranty of title).

- 8. BROKERS AND AUCTIONEER:** All obligations of the parties for payment of Auctioneer and Brokers fees are contained in a separate written agreement; however, the Title Company is authorized to disburse all funds payable to Auctioneer pursuant to that agreement from proceeds at closing. Both Seller and Buyer agree to indemnify and hold the other party harmless against any claim for any brokers or other fees and/or commissions due as the result of the execution of this contract, which may be claimed or asserted as the result of the actions of the indemnifying party in connection with the negotiation and/or execution of this contract. Such obligation of indemnity shall include indemnifying and reimbursing the indemnified party for all reasonable attorney's fees, which are incurred by the indemnifying party in defending against any such indemnified claim.

**9. CLOSING:**

- A. The closing of the sale will be on or before **5:00 PM, Friday, April 26, 2019** (the "Closing Date"). If either party fails to close by the Closing Date, the non-defaulting party may exercise the remedies in Paragraph 15.
- B. At closing, Seller will execute and deliver, at Seller's expense, a special warranty deed. If any part of the Sales Price is financed, then the deed will include a vendor's lien, only if the lender requests the vendor's lien prior to the Closing Date. Seller will convey the

Property at closing subject to the Permitted Encumbrances and any discrepancies, conflicts or shortages in area or boundary lines, or any encroachments or protrusions or any overlapping of improvements, and all other matters that a current survey or visual inspection of the Property would reveal; all easements, restrictions, conditions, outstanding oil, gas, and mineral interests, including royalty interest; all other encumbrances to the extent the same are valid, enforceable and affect the Property; and all laws, rules, and regulations (including zoning ordinances) of applicable governmental authorities having or asserting jurisdiction over the Property.

C. At closing, Seller, at Seller's expense, will also deliver:

- (1) tax statements for the Property; and
- (2) any notices, statements, certificates, affidavits, releases, and other documents required by this Contract or law necessary for the closing of the sale and issuance of the title policy.

D. At closing, Buyer will:

- (1) pay the Sales Price in good funds acceptable to the Title Company, unless Buyer has already paid the Sales Price to Seller as required under Paragraph 5 above;
- (2) deliver evidence that the person executing this Contract is legally capable and authorized to bind Buyer; and
- (3) execute and deliver any notices, statements, certificates, or other documents required by this Contract or law necessary to close the sale.

**10. POSSESSION:** Seller will deliver possession of the Property to Buyer on funding of this sale in its present condition. Until closing, Seller will operate the Property in the same manner as on the effective date. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

**11. SPECIAL PROVISIONS:** *(Identify exhibit if special provisions are contained in an attachment.)*

See Addendum A, which is attached hereto and made a part hereof for all purposes.

**12. SALES EXPENSES:**

A. Seller's Expenses: Seller will pay for the following at or before closing:

- (1) releases of existing liens, except those shown on the Title Commitment or assumed by Buyer, including prepayment penalties and recording fees;
- (2) tax statements or certificates;
- (3) preparation of the deed;
- (4) costs to record any documents to cure title objections that Seller has elected to cure; and
- (5) other expenses that Seller will pay under other provisions of this contract.

B. Buyer's Expenses: Buyer will pay for the following at or before closing:

- (1) all loan expenses (for example, application fees, origination fees, discount fees, buy-down fees, commitment fees, appraisal fees, assumption fees, recording fees, tax service fees, mortgage title policy expenses, credit report fees, document preparation fees, interest expense that Buyer's lender requires Buyer to pay at closing, loan related inspection fees, amortization schedule fees, courier fees, underwriting fees, wire transfer fees, and other fees required by Buyer's lender);
- (2) preparation of any deed of trust;
- (3) recording fees for the deed and any deed of trust;
- (4) premiums for flood insurance as may be required by Buyer's lender, if any;
- (5) any escrow fee;
- (6) copy and delivery fees for delivery of the title commitment and related documents; and
- (7) other expenses that Buyer will pay under other provisions of this contract.

### **13. PRORATIONS, ROLLBACK TAXES, RENT, AND DEPOSITS:**

#### **A. Prorations:**

- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
- (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 13.A.(2) survives closing.

#### **B. Rollback Taxes: If Seller changes the use of the Property before closing which results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Buyer. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 13.B. survives closing.**

### **14. CONDEMNATION:** If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

- A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money will be refunded to Buyer; or
- B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:
  - (1) Seller and the sales price will be reduced by the same amount; or
  - (2) Buyer and the sales price will not be reduced.

**15. DEFAULT:**

- A. If Buyer fails to comply with this Contract, Buyer is in default and Seller may elect to do any or all of the following or a combination thereof:
  - (1) terminate this Contract and receive the earnest money as liquidated damages, thereby releasing the parties from this Contract;
  - (2) enforce specific performance; or
  - (3) seek other relief as may be provided by law.
  
- B. If Seller fails to comply with this Contract, Seller is in default and Buyer may as its sole and exclusive remedy, either:
  - (1) terminate this Contract and receive the earnest money as liquidated damages, thereby releasing the parties from this Contract; or
  - (2) enforce specific performance, thereby waiving any title objections.
  
- C. **All rights and remedies of Seller under this Paragraph 15 will be cumulative, and none will exclude any other right or remedy provided by law or by any other provision of this Contract. All rights and remedies of Seller may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.**

**16. ATTORNEY'S FEES:** If Buyer or Seller is a prevailing party in any legal proceeding brought under or with relation to this Contract or this transaction, such party is entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorneys' fees. This Paragraph 16 survives termination of this Contract.

**17. INTENTIONALLY DELETED.**

**18. INTENTIONALLY DELETED.**

**19. NOTICES:** All notices between the parties under this Contract must be in writing and are effective when hand-delivered or mailed by certified mail return receipt requested to the recipient parties' addresses stated in Paragraph 1.

**20. INTENTIONALLY DELETED.**

**21. DISPUTE RESOLUTION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this Contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this Contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**22. AGREEMENT OF THE PARTIES:**

- A. This Contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns.

- B. This Contract is a Non-Contingent Contract to the Buyer. This Contract is not subject to Buyer obtaining financing, survey, inspections, due diligence or any other matter. Buyer waives any and all rights to terminate this Contract and make demand of the Deposit, subject only to the provisions defined in Paragraph 15.B.(1) above. If Buyer Fails to comply with this Contract, Buyer is in default and is subject to the remedy as defined in Paragraph 15.A. above. Furthermore, if Buyer is in default, Buyer authorizes the Title Company to release the Deposit immediately upon Seller's written demand, without approval or consent from Buyer. Buyer hereby releases the Title Company from any and all liability in connection with the release of Deposit to Seller.
- C. This Contract is to be construed in accordance with the laws of the State of Texas.
- D. This Contract contains the entire agreement of the parties and may not be changed except in writing. In the event any covenant, condition or provision herein contained is held to be invalid by final judgment of any Court of competent jurisdiction, the invalidity of such covenant, condition or provision shall not in any way affect any other covenant, condition or provision herein contained, which shall continue in full force and effect.
- E. If this Contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.
- F. Buyer may not assign this Contract without the written consent of Seller.
- G. Addenda which are part of this Contract are: *(Check all that apply.)*
  - (1) Addendum "A";
  - (2) Legal Description Exhibit "A" identified in Paragraph 2;
  - (3) Title Commitment Exhibit "B" identified in Paragraph 6.A.3;
  - (4) Survey Exhibit "C" identified in Paragraph 6.B;
  - (5) Buyer's Certificate

**23. TIME:** Time is of the essence in this Contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday. As used in this contract, the term "legal holiday" means any day other than Saturday or Sunday on which the Federal Reserve Bank of Dallas is closed.

**24. EFFECTIVE DATE:** The effective date of this Contract for the purpose of performance of all obligations is the date this contract is executed by Seller and Buyer.

**25. ADDITIONAL NOTICES:**

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this Contract.

- C. If the Property is not located within a municipality's limits or a municipal utility district (MUD) and is located in a certificated service area of a utility service provider (a utility, a water supply or sewer service corporation, or a special utility district organized and operating under Chapter 65, Water Code), ' 13.257, Water Code requires Seller to deliver a notice regarding the utility service provider to Buyer.
- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, ' 33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract.
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, ' 61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Selection of inspectors and repairmen is the responsibility of Buyer and not the brokers.
- H. Buyer shall not rely upon any oral or written representations about the Property from Seller.
- I. This signed Contract transmitted by fax machine shall be treated in all manner and respects as an original document and shall be considered to have the same binding legal effect as an original document.
- J. All obligations of the parties created hereunder are performable in Harris County, Texas. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, and unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. This Contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter and cannot be changed except by their written consent. Words of any gender used in this Contract 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.

**26. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date, Buyer may:

- (A) terminate this Contract and the Earnest Money will be refunded to Buyer;

- (B) accept the Property in its damaged condition and accept an assignment of any insurance proceeds Seller is entitled to receive.

Notwithstanding the foregoing, if the amount of damage which has occurred as the result of such casualty is less than \$50,000, this Contract shall not terminate, and Buyer shall accept the Property in it damaged condition and accept an assignment of any insurance proceeds Seller is entitled to receive.

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SAMPLE

**READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. CONSULT your attorney BEFORE signing.**

Buyer's Attorney is \_\_\_\_\_

Seller's Attorney is: Wayne Kitchens,  
[wkitchens@hwa.com](mailto:wkitchens@hwa.com);  
713-328-2807

Buyer: \_\_\_\_\_

Seller: Janet S. Northrup, acting solely in her capacity individually

**BUYER:**

**SELLER:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SAMPLE

**ESCROW RECEIPT**

Escrow agent acknowledges receipt of:

- A. the Contract on this day \_\_\_\_\_ (the "Effective Date");
- B. Deposit Money in the amount of \$ \_\_\_\_\_ in the form of \_\_\_\_\_ on \_\_\_\_\_, 2012.

Escrow Agent: Tammy A. Mervin, Senior Commercial Escrow Officer, First American Title Insurance Company, 833 E Michigan St, Ste. 550, Milwaukee, WI 53202

Phone: 414-203-4181

By: \_\_\_\_\_

Fax: 414-224-6188

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SAMPLE

## ADDENDUM A

This Addendum to Auction Sale Purchase Contract is annexed to the Auction Sale Purchase Contract between Janet S. Northrup, acting solely in her capacity as Chapter 7 Bankruptcy Trustee in the matter of In re: Plant Pro, Inc, Case No. 18-36501, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, and \_\_\_\_\_ not individually as "Seller" and \_\_\_\_\_ as "Buyer," and to the extent any of the provisions of this Addendum modify or contradict the provisions of the Contract, then to such extent, the provisions of this Addendum shall prevail. Seller and Buyer agree as follows:

The parties agree the Auction Sale Purchase Contract is amended by adding the following paragraphs:

1. DISCLAIMER OF WARRANTIES & "AS-IS" CONDITION OF PROPERTY:

**BUYER ACKNOWLEDGES AND AGREES THAT BUYER IS EXPERIENCED IN THE OWNERSHIP AND OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT BUYER PRIOR TO THE CLOSING DATE WILL HAVE INSPECTED THE PROPERTY TO ITS SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTION. BUYER ACKNOWLEDGES THAT IT IS FULLY RELYING ON BUYER'S (OR BUYER'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND NOT UPON ANY STATEMENTS (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY SELLER OR ANY OF SELLER'S REPRESENTATIVES. BUYER ACKNOWLEDGES THAT BUYER HAS (OR BUYER'S REPRESENTATIVES HAVE), OR PRIOR TO THE CLOSING DATE WILL HAVE, THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY BUYER IN ORDER TO ENABLE BUYER TO EVALUATE THE CONDITION OF THE PROPERTY AND ALL OTHER ASPECTS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL CONDITION OF THE PROPERTY). BUYER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE MANNER, CONSTRUCTION, CONDITION, AND STATE OF REPAIR OR LACK OF REPAIR OF ANY IMPROVEMENTS LOCATED ON THE PROPERTY, (B) THE NATURE AND EXTENT OF ANY RIGHT OF WAY, LEASE, POSSESSION, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION OR OTHERWISE THAT MAY AFFECT THE PROPERTY, (C) THE NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (D) THE INCOME TO BE DERIVED FROM THE PROPERTY, (E) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, (F) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES (INCLUDING ZONING**

ORDINANCES, IF ANY) OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (G) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, OR (H) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING ANY HAZARDOUS SUBSTANCE OR TOXIC MATERIALS (INCLUDING ANY ASBESTOS, UNDERGROUND STORAGE TANKS OR ANY OTHER SUBSTANCE WHICH IS PROHIBITED BY STATE OR FEDERAL LAW), OR SOLID WASTE AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, AND REGULATIONS PROMULGATED THEREUNDER. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS-IS" CONDITION AND BASIS WITH ALL FAULTS, BUYER HEREBY WAIVES, RELEASES, ACQUITS AND FOREVER DISCHARGES SELLER, SELLER'S EMPLOYEES, AGENTS AND ANY OTHER PERSON ACTING ON BEHALF OF SELLER, OF AND FROM ANY CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, LIABILITIES, COSTS AND EXPENSES WHATSOEVER (INCLUDING COURT COSTS AND ATTORNEY'S FEES), DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, WHICH BUYER NOW HAS OR WHICH MAY ARISE IN THE FUTURE, ON ACCOUNT OF OR IN ANY WAY GROWING OUT OF OR IN CONNECTION WITH THE PHYSICAL CONDITION OF THE PROPERTY OR ANY LAW, STATUTE, ORDINANCE, RULE OR REGULATION OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL AUTHORITY APPLICABLE THERETO. AFTER CLOSING, AS BETWEEN BUYER AND SELLER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING WILL BE THE SOLE RESPONSIBILITY OF BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, BUYER RELEASES SELLER FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED, 42 U.S.C. § 9601 ET SEQ., THE RESOURCE CONSERVATION AND RECOVERY ACT, AS AMENDED, 42 U.S.C. § 6901 ET SEQ., THE OIL POLLUTION ACT 33 U.S.C. § 2701 ET SEQ., THE TEXAS SOLID WASTE DISPOSAL ACT TEX. HEALTH & SAFETY CODE ANN § 361 ET SEQ., OR THE TEXAS WATER CODE. BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS

**AFFECTING THE PROPERTY UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON SELLERS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY. PRIOR TO EXECUTING THE CONTRACT, BUYER WAS AFFORDED ADEQUATE TIME AND ACCESS TO INSPECT THE PROPERTY. BUYER'S ACCEPTANCE OF THE PROPERTY IN ITS "AS-IS", "WHERE-IS" CONDITION IS PARTIAL CONSIDERATION AND A SIGNIFICANT FACTOR IN THE NEGOTIATED SALES PRICE. BOTH BUYER AND SELLER, AFTER NEGOTIATION, MUTUALLY AGREED TO THE PROPERTY BEING CONVEYED IN ITS AS IS, WHERE IS CONDITION.** The provisions of this Paragraph shall survive the closing of this transaction and shall not be deemed merged into the deed of the Property to Buyer or any other instrument executed in connection herewith. At Seller's option, the deed to the Property may incorporate the terms and conditions of this Paragraph, but the lack of such incorporation shall not limit, waive or impair the terms and conditions hereof in any manner. The possession of the Property shall be delivered to Buyer at funding, in its "AS-IS," "WHERE-IS" "condition, with all faults and without warranties of any kind, express or implied, or arising by operation of law, except only the title warranties expressly set forth in the Deed.

2. Buyer is strongly advised to thoroughly inspect the Property, to obtain engineering inspections, surveys, termite inspections, and market and rental studies (collectively, the "Inspections") with respect to the Property. Buyer acknowledges that Buyer is relying solely on such inspections, studies, reports and examinations in Buyer's determination of the condition of the Property. Buyer further waives and releases any claims, demands, damages, causes of action or other remedies of any kind whatsoever against Seller for property damages or bodily and/or personal injuries to Buyer, its agents, independent contractors, servants and/or employees arising out of any Inspections prior to the Closing Date. In the event the transaction described in this contract shall not close, Buyer shall restore the Property to its prior condition, if changed due to the inspections performed by Buyer or at Buyer's request and shall provide Seller with the copies of the results of any studies and inspections made by Buyer. The provisions of this paragraph shall survive the Closing or any termination of the contract notwithstanding any contrary provisions hereof and Buyer's restoration obligations (and Seller's right to enforce the same) shall, notwithstanding any contrary provision hereof, in no way be limited by any limitations on Seller's remedies set forth in Paragraph 15 of the contract, Seller to have all rights and remedies in the enforcement of Buyer's indemnification obligations.

3. Notwithstanding anything to the contrary in the Auction Sale Purchase Contract or this Addendum, Buyer hereby waives any and every claim or cause of action against Seller relating to or arising out of the Property, including those related to title thereto (including all implied warranties). The provisions of this paragraph shall survive the Closing.

4. The provisions of this Addendum shall survive the closing of the transaction contemplated hereby or the earlier termination of this contract.

5. **WAIVER OF CONSUMER RIGHTS.** BUYER WAIVES BUYER'S RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF BUYER'S SELECTION, BUYER VOLUNTARILY CONSENTS TO THIS WAIVER WITH RESPECT TO THIS CONTRACT AND THE PROPERTY PURCHASED UNDER THIS CONTRACT. Buyer hereby represents and warrants that (a) Buyer's legal counsel was not directly or indirectly identified, suggested or selected by Seller or an agent of Seller and (b) Buyer does not consider Buyer to be in a significantly disparate bargaining position with respect to this contract.

SAMPLE

**EXHIBIT "A"**

LEGAL DESCRIPTION

[ATTACHED]

SAMPLE

**EXHIBIT "B"**

TITLE COMMITMENT

[Attached]

SAMPLE

## BUYER'S CERTIFICATE

This Buyer's Certificate (this "Certificate") is made as of February 20, 2019 by \_\_\_\_\_ ("Buyer") for the benefit of Janet S. Northrup, acting solely in her capacity as Chapter 7 Bankruptcy Trustee in the matter of In re: Plant Pro, Inc, Case No. 18-36501, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, and not individually, ("Seller").

### BACKGROUND

- A. On \_\_\_\_\_, 2019, Buyer attended an auction (the "Auction") conducted by TRANZON ASSET ADVISORS ("Sale's Agent"). At the Auction, Buyer made the highest bid for that certain real property (the "Property") in Waller County Texas, more particularly described in that certain Auction Sale Purchase Contract (the "Contract") of even date herewith wherein Buyer agreed to purchase, and Seller agreed to sell the Property.
- B. Prior to the Auction, Seller' Agent made available to Buyer and all other interested parties a copy of the title commitment, annexed to the Contract as Exhibit "B" thereto (the "Commitment"), (such availability is collectively, the "Pre-Auction Delivery").
- C. At the Auction, Seller' Agent made available to Buyer and all other interested parties a copy of the Commitment and the Survey, if any (such availability is collectively, the "Auction Delivery").
- D. The Commitment and the Survey, if any, were affixed to the Contract (such being collectively, the "Contract Delivery"). Buyer was given and had sufficient time to review the Commitment and the Survey prior to executing the Contract (the "Review").

### CERTIFICATION, REPRESENTATIONS AND WARRANTIES

For good and valuable consideration, the receipt and sufficiency of which are by this Certificate acknowledged, Buyer make the following certifications, representations and warranties:

1. Buyer was aware of the Pre-Auction Delivery and of its opportunity to receive the Pre-Auction Delivery. Buyer either received or did not receive the Pre-Auction Delivery, as the case may be, at Buyer's election, and was not prevented from receiving the Pre-Auction Delivery by Seller or Seller's Agent.
2. Buyer received the Auction Delivery. Buyer either reviewed or did not review the Auction Delivery, as the case may be, at Buyer's election, and was not prevented from receiving the Auction Delivery by Seller or Seller's Agent.

3. Buyer received the Contract Delivery.
4. Buyer is experienced in the ownership and operation of properties similar to the Property and that Buyer prior to execution of the Contract has (i) inspected the Property to its satisfaction and is qualified to make such inspection, and (ii) conducted the Review to its satisfaction and is qualified to make such Review. Buyer was not prevented from receiving or reviewing the Contract Delivery by Seller, Seller's Agent or any other party. Buyer acknowledges that it is a MATERIAL PART OF THE CONSIDERATION FOR THE CONTRACT, WHICH THE PURCHASE PRICE REFLECTS, THAT BUYER AGREES TO ACCEPT THE PROPERTY ON THE CLOSING DATE IN ITS "AS-IS, WHERE IS" CONDITION AND WITH ALL FAULTS, AND WITHOUT REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, except only the title warranties expressly set forth in the deed dated on the closing date.

This Certificate is executed and effective on \_\_\_\_\_, 2019.

**BUYER:**

\_\_\_\_\_

SAMPLE