

## AGREEMENT OF PURCHASE AND SALE

**THIS AGREEMENT** made this \_\_\_ day of \_\_\_\_, 2017, by and between the County of Greenville and the City of Greenville (“Sellers”), Echelon Acquisition, LLC (“Purchaser”), and South Carolina Technology and Aviation Center (“SCTAC”).

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Property.** Sellers agree to convey and Purchaser agrees to accept, upon the terms and conditions hereinafter set forth, that certain parcel of land, together with any improvements thereon, being located in Greenville County, South Carolina, consisting of approximately 0.16 acres, and being shown as the cross-hatched area on the survey attached hereto as Exhibit A (the “Property”). SCTAC serves as manager of the Property and endorses the sale of the Property upon the terms and conditions hereinafter set forth.

2. **Consideration.** The consideration for this conveyance is Purchaser’s agreement to indemnify Sellers and SCTAC for any claims arising from Purchaser’s use of the Property.

3. **Title and Survey.** Purchaser shall have the right, at its expense, to make such examinations of title and survey as it deems necessary or desirable. Purchaser shall notify Sellers and SCTAC of its objection to any matters of title (such objections being referred to as the “Title Exceptions”) and of its objection to any matters of survey (such objections being referred to as the “Survey Exceptions”). Sellers shall notify Purchaser upon the earlier of (a) ten (10) days after receipt of Purchaser’s notice or (b) prior to Closing whether it will cure or remove the Title Exceptions and Survey Exceptions, as applicable. Sellers shall be under no obligation to cure or remove any such Title Exceptions or Survey Exceptions. If Sellers do not respond, Sellers shall be deemed to have refused to cure or remove any such Title Exceptions or Survey Exceptions. If Sellers shall notify Purchaser that it is unable or unwilling to cure or remove any Title Exceptions or Survey Exceptions, or be deemed to have refused to cure or remove the same, then Purchaser shall have the option to terminate this Agreement.

4. **Closing.** Closing (the “Closing”) will be held as soon as possible after the execution of this Agreement. Closing will take place at the offices of Purchaser’s attorney in Spartanburg, South Carolina, or at such other place as the parties may otherwise agree.

5. **Sellers’ Deliveries at Closing.** At Closing, Sellers agree to execute the following document(s):

- (i) Deed. A quitclaim deed in proper statutory form, conveying unto Purchaser fee simple, marketable, indefeasible and insurable title to the Property and clear of all liens, charges and encumbrances.
- (ii) No Lien Affidavit. An affidavit, for the benefit of Purchaser and Purchaser’s title insurance company (in the form required by the title insurance company), that there are no amounts owed for labor, materials or services with respect to the Property.

- (iii) Owner's Affidavit. An affidavit, for the benefit of Purchaser and Purchaser's title insurance company (in the form required by the title insurance company), that there are no tenants or others claiming interests in the Property.
- (iv) Residency Certificates. Certificates, certifying under oath, that neither Seller is a "non-resident" within the meaning of S.C. Code §12-8-580 nor a "foreign person" as defined in Section 1445 of the U.S. Internal Revenue Code.
- (v) Such other documents as Purchaser, its attorney or its title insurance company may reasonably request.

6. **Closing Costs, Taxes and Assessments.** Each of the parties shall pay its own attorney's fees and other expenses arising from this transaction. Purchaser shall pay for preparation of the deed and shall pay all state, county and local transfer taxes and fees on the deed. Purchaser shall pay for the preparation of the survey. Any and all general and special assessments against the Property shall be paid in full by Sellers prior to or at closing. As of the date of Closing, ad valorem taxes for the year of Closing shall be prorated on a calendar year basis. If the Property is subject to rollback taxes, rollback taxes shall be paid by Purchaser.

7. **Representations and Covenants of Sellers and SCTAC.** Sellers and SCTAC represent and warrant unto Purchaser, and the closing hereunder shall be made and expressly conditioned upon the truth and accuracy of the following representations and warranties, which shall survive the closing hereunder:

(a) **Title.** Sellers are the owners of marketable record title to the Property, free from all security interests, liens and encumbrances, other than matters of record approved or accepted by Purchaser, and there are no parties, other than Sellers and SCTAC, which have a right to occupy all or any part of the Property, and Sellers shall deliver exclusive possession of the Property to Purchaser at Closing.

(b) **Litigation.** Sellers and SCTAC have no actual knowledge of any litigation or proceeding pending, or threatened against or relating to the Property, Sellers or SCTAC, which would restrict the right of the Sellers to deliver clear title to the Property and to consummate the transactions described in this Agreement.

(c) **Condemnation.** Sellers and SCTAC have no actual knowledge of any condemnation or eminent domain proceeding affecting the Property is pending or threatened.

(d) **Taxes.** Sellers and SCTAC have no actual knowledge of any unpaid assessments or amounts outstanding for local, state or federal taxes, including sales and use taxes, personal property, rollback or other ad valorem taxes which affect the Property.

(e) No Default. Sellers and SCTAC have no actual knowledge that the execution of this Agreement or the consummation of the transactions contemplated hereby constitutes or shall result in a breach of, or a default under, any agreement document, instrument or other obligation to which either Seller or SCTAC is a party or by which Sellers or SCTAC may be bound, or any law, statute, ordinance, rule, governmental regulation or any writ, injunction, order or decree of any court or governmental body, applicable to Sellers, SCTAC or the Property.

(f) No Rights of Others. Sellers and SCTAC have not granted any options, rights of first refusal or any other rights in others to purchase or acquire any portion of the Property.

(g) Valid and Binding. This Agreement is, and all agreements, instruments and documents to be executed and delivered by Sellers and SCTAC pursuant to this Agreement shall be, valid and legally binding upon Sellers and SCTAC and enforceable in accordance with their respective terms.

(h) Survival. The representations and warranties set forth in this Agreement shall survive the closing and be binding upon the Sellers and SCTAC, their successors and assigns as herein provided.

8. **Property Sold As Is.** Purchaser acknowledges that except as otherwise set forth herein or in the quitclaim deed from Sellers to Purchaser, Purchaser is purchasing the property "as is" and without warranty or representation by Sellers or SCTAC, express or implied, as to the condition of the property, including the presence or release of any hazardous material, its fitness for any particular purpose, or its compliance with any laws and regulations, including without limitation environmental laws and regulations. Purchaser acknowledges that during the feasibility study purchaser will satisfy itself on all such matters. Purchaser waives any and all claims and causes of action of any kind against sellers and SCTAC for the conditions listed above, including without limitation any and all environmental contamination or the presence or release of any hazardous material at, upon, under, within, or from the property.

"Hazardous Material" means any substance classified as a hazardous substance, hazardous waste, contaminant, petroleum or petroleum product under the federal Comprehensive Environmental Response, Compensation and Liability Act, Resource Conservation and Recovery Act, the state Hazardous Waste Management Act, State Underground Petroleum Environmental Response Bank Act, or Pollution Control Act, and their amendments, or other applicable environmental law.

Purchaser and Sellers acknowledge that certain letter from the U.S. Army Corps of Engineers (the "Corps") dated January 27, 2004 attached hereto as Exhibit B, in which the Corps stated, "[t]he Corps will address environmental concerns with respect to the release of hazardous substances that resulted from [Department of Defense] ownership or operation of the [former Donaldson Air Force Base], insofar as required by the Comprehensive Environmental Restoration (sic) Compensation and Liability Act (CERCLA)" and further stated "[t]o the extent that environmental concerns at the [former Donaldson Air Force Base] are found to be eligible to

be addressed under the [Defense Environmental Restoration Program – Formerly Used Defense Site] Program, the Corps will assume responsibility for such concerns.”

9. **Inspections.** After the date hereof, Purchaser and its agents may enter upon the Property for purposes of inspection and testing during reasonable hours.

10. **Sellers and SCTAC Deliveries after Execution.** Immediately after the execution of this Agreement, Sellers and SCTAC shall deliver to Purchaser the following:

- (i) Environmental audit(s) and engineering reports;
- (ii) Title opinions, title insurance policies or commitments, with copies of exceptions to the title listed thereon;
- (iii) Recorded and unrecorded property surveys;
- (iv) Zoning letters or other evidence of use restrictions;
- (v) Any and all leases affecting the Property;
- (vi) All licenses and permits affecting the Property; and
- (vii) All plans, surveys, drawings and specifications of the improvements on the Property.

11. **Conditions Precedent.**

(a) The closing of the sale and the obligation of Purchaser to take title to the Property is contingent upon the occurrence, completion or satisfaction of the following matters prior to closing, to the Purchaser’s satisfaction in its sole and absolute discretion, as conditions precedent to its obligation to consummate the purchase hereunder:

(i) The representations and warranties of Sellers and SCTAC contained in this Agreement shall be true, complete and accurate in all material respects, on and as of the date hereof and the date of closing as if the same were made on and as of such date;

(ii) Sellers and SCTAC shall have performed each and every obligation and covenant of Sellers and SCTAC to be performed hereunder;

(iii) Sellers and SCTAC shall have delivered to Purchaser all the items required to be delivered to Purchaser pursuant to the terms of this Agreement;

(iv) Purchaser shall have applied for and received a commitment for a standard form policy of owner’s title insurance issued by a title insurance company doing business in the State of South Carolina, selected by Purchaser, insuring its title in the

Property with current survey coverage, and containing only those exceptions, conditions and reservations, acceptable to Purchaser and its counsel, in their sole discretion;

(v) Purchaser shall have determined that no land use restrictions of any kind shall unreasonably limit its intended use of the Property;

(vi) Purchaser shall have received satisfactory results from the investigations and tests which it has conducted with respect to the Property; and

(vii) Purchaser shall have closed on its purchase of the property identified as 8.99 acres on the survey attached hereto as Exhibit A from Crown Metro Chemicals, Inc.

(b) Upon any nonoccurrence, noncompletion, nonfulfillment or failure of any of the conditions precedent set forth in this section, Purchaser shall have the right to notify the Sellers and SCTAC of its intention to terminate this Agreement.

12. **Remedies.** If Sellers or SCTAC default under this Agreement, the Purchaser may terminate this Agreement, whereupon this Agreement shall be of no further force or effect; or if it so elects, Purchaser may seek specific performance of this Agreement in a court of competent jurisdiction, but no other remedy.

13. **Condemnation.** If, prior to Closing, all or any part of the Property is taken or threatened to be taken by eminent domain, Sellers and SCTAC shall provide written notice thereof to Purchaser and Purchaser may elect to cancel this Agreement by written notice thereof to Sellers and SCTAC. In the event that Purchaser shall so elect, both parties shall be relieved and released from any further liability hereunder.

14. **Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. This Agreement may not be assigned by Purchaser without the prior written consent of Sellers and SCTAC.

15. **Commissions.** Each party represents and warrants that it has not contracted for or is otherwise subject to any claim for brokerage commissions or similar fees.

16. **Entire Agreement.** It is understood and agreed that this Agreement constitutes the entire agreement of the parties, all prior or contemporaneous agreements and representations, whether oral or written, being merged herein and superseded hereby, and neither party shall rely upon any statement or representation made by the other not embodied in this Agreement. The covenants and warranties contained herein shall survive the Closing.

17. **Modification.** This Agreement may not be modified or amended nor shall any of its provisions be waived except by a written instrument signed by Sellers, Purchaser, and SCTAC.

18. **Possession.** Possession of the Property will be delivered at Closing.

19. **Severability.** In the event any provision in this Agreement shall be held by a court of competent jurisdiction after final appeal (if any) to be illegal, unenforceable or contrary to public policy, then such provision shall be stricken and the remaining provisions of this Agreement shall continue in full force and effect; provided, however, that if such provision embodies a condition of Purchaser's obligation to close, Purchaser may at its option terminate this Agreement.

20. **Time of Essence.** Time is of the essence to the parties with respect to this Agreement and closing of the sale provided for herein.

21. **Paragraph Headings.** The paragraph headings contained herein are for convenience only, and should not be construed as limiting or altering the terms hereof.

22. **Governing Law.** This Agreement shall be construed and enforced according to the laws of the State of South Carolina.

23. **Notices.** All notices required or permitted to be given hereunder shall be in writing and either hand delivered or sent by certified mail, return receipt requested, to the party to be notified. Notice by mail shall be effective on the date placed in the mail.

24. **Benefit and Survival.** All of the covenants, conditions, agreements, undertakings, representations and warranties of the Sellers, SCTAC and Purchaser shall survive the closing hereunder, and shall be binding upon and shall inure to the benefit of the Sellers, SCTAC and Purchaser, and their respective successors and assigns.

IN WITNESS WHEREOF, this Agreement has been duly signed, sealed and delivered by the parties hereto the day and year first above written.

[signatures follow on the next page]

**CITY OF GREENVILLE**

By: \_\_\_\_\_ (SEAL)

Its: \_\_\_\_\_

**COUNTY OF GREENVILLE**

By: \_\_\_\_\_ (SEAL)

Its: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Its: \_\_\_\_\_

**ECHELON ACQUISITION, LLC**

By: \_\_\_\_\_ (SEAL)

Its: \_\_\_\_\_

**SOUTH CAROLINA TECHNOLOGY AND  
AVIATION CENTER**

By: \_\_\_\_\_ (SEAL)

Its: \_\_\_\_\_

EXHIBIT A



**LEGEND**

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EXHIBIT B



DEPARTMENT OF THE ARMY  
CHARLESTON DISTRICT, CORPS OF ENGINEERS  
89A HAGOOD AVENUE  
CHARLESTON SOUTH CAROLINA 29405-5117

REPLY TO  
ATTENTION OF

JAN 27 2004

Programs and Project Management

Subject: Defense Environmental Restoration Program Formerly Used Defense Site (DERP-FUDS)  
Project Eligibility Determination for the Kitty Hawk / Idaho Property, Former Donaldson Air Force  
Base, Greenville, South Carolina

Mr. Vardry Ramseur  
Donaldson Industrial Park  
2 Exchange Street  
Greenville, South Carolina 29605

Dear Mr. Ramseur:

I refer to your discussions with Savannah District concerning property in Greenville, South Carolina. The subject property is located to the southeast, across the street from Area of Concern 5 (AOC 5; Primary Wash Craft Area). You have advised the U.S. Army Corps of Engineers that the Donaldson Development Commission (DDC) is attempting to transfer title for the subject property. Below is a recap of the Corps' activities in connection with AOC 5.

Two Remedial Investigation/Feasibility Study reports (SAIC, 2000 and 2002) have been completed at AOC 5 under the Defense Environmental Restoration Program - Formerly Used Defense Site (DERP-FUDS) program. The 2002 study identified several constituents of potential concern in groundwater. An Interim Removal Action (IRA) was also completed to remove the main sources of the contamination, including contaminated soil, sumps, lagoons and other smaller structures (Bhate, 2000). Groundwater flow direction is in a southeasterly direction from AOC 5 towards the subject property.

The former Donaldson Air Force Base (FDAFB) has been evaluated by the Corps, under the DERP. The DERP is a congressional program to provide restoration on properties where former use by the Department of Defense (DOD) may have caused environmental concerns. The property that is within the boundaries of FDAFB is eligible for DERP-FUDS review. The Corps has been delegated responsibility to execute the DERP-FUDS program on behalf of DOD.

The Corps will address environmental concerns with respect to releases of hazardous substances that resulted from DOD ownership or operation of the FDAFB, insofar as required by the Comprehensive Environmental Restoration Compensation and Liability Act (CERCLA) (42 USC 9601 et seq.). The Corps must adhere to CERCLA liability standards in investigating such matters to determine whether any contamination found at the FDAFB is, in fact, eligible to be

addressed by a cleanup project under the DERP-FUDS program or should be the responsibility of another potentially responsible party. This is true of any property located within the boundaries of the FDAFB. As such, this letter is not and should not be interpreted to be a release from liability for any entities that may be potentially responsible for environmental concerns at the FDAFB under CERCLA (42 USC 9601 et seq.) or RCRA (42 USC 6901 et seq.).

To the extent that environmental concerns at the FDAFB are found to be eligible to be addressed under the DERP-FUDS Program, the Corps will assume responsibility for such concerns. The point of contact for this matter is Ron Nesbit at (843) 329-5054.

Respectfully,

A handwritten signature in cursive script, appearing to read "William Stein".

William Stein, P.E.  
Deputy District Engineer  
for Project Management