

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE CENTRAL TEXAS
REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 10-79

**RESOLUTION AUTHORIZING A CONTRACT TO ACQUIRE CERTAIN
PROPERTY IN TRAVIS COUNTY FOR THE US 290 EAST TOLL PROJECT
(Parcel 7)**

WHEREAS, pursuant to and under the authority of Subchapter E, Chapter 370, Texas Transportation Code, its Resolution 10-50, and other applicable law, the Central Texas Regional Mobility Authority ("CTRMA") found and determined that to promote the public safety, to facilitate the safety and movement of traffic, and to preserve the financial investment of the public in its roadways and the roadways of the State of Texas, public convenience and necessity requires acquisition of fee simple title to that certain 1.149 acres described by metes and bounds in the Real Estate Contract attached as Attachment "A" to this Resolution (the "Subject Property"), owned by KAF II DEVELOPMENT CO. (the "Owner"), for the construction, reconstruction, maintaining, widening, straightening, lengthening, and operating of the US 290 East Toll Project (the "Project"), as a part of the improvements to the Project; and

WHEREAS, an independent, professional appraisal report of the Subject Property has been submitted to the CTRMA, and an amount has been established to be just compensation for the property rights to be acquired; and

WHEREAS, the Executive Director of the CTRMA, through agents employed or contracted with the CTRMA, has transmitted an official written offer to the Owner, based on the amount determined to be just compensation, and has entered into good faith negotiations with the Owner of the Subject Property to acquire the Subject Property; and

WHEREAS, the Executive Director and the Owner have agreed on the amount determined to be just compensation and damages, if any, due to said Owner for the Subject Property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the CTRMA that the Executive Director is specifically authorized and directed to execute a contract to purchase the Subject Property in the form or substantially the same form attached as Attachment "A" together with all associated documents necessary to acquire the fee simple interest in the Subject Property, for a total contract acquisition price of \$2,150,000.00.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 28th day of July, 2010.

Submitted and reviewed by:



Andrew Martin, General Counsel
Central Texas Regional Mobility Authority

Approved:



Ray A. Wilkerson
Chairman, Board of Directors
Resolution Number 10-79
Date Passed: 7/28/10

Attachment "A"
Real Estate Contract for Parcel 7

**CONTRACT FOR SALE OF
8701 US HWY 290 EAST
AUSTIN, TEXAS**

KAFII DEVELOPMENT CO. ("Seller"), and the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY ("Purchaser"), agree as follows:

1. Agreement for Sale of the Property. Subject to the terms and conditions of this Contract, Seller agrees to sell and convey to Purchaser and Purchaser agrees to purchase the following described property located in Travis County, Texas (collectively referred to as the "Property"):

a. Land. A tract of land more specifically described by metes and bounds in Exhibit A (Parcel 7), which is attached hereto and incorporated herein by reference (the "Land");

b. Buildings. All improvements and fixtures owned by Seller and located on the Land (the "Building") that are considered part of the real property, and specifically excluding any personal property of Seller or any tenant located on the Land;

c. Other Property.

(i) the interest of the lessor or landlord under all leases, tenancies, rental, use, occupancy, and concession agreements covering space on the Land or in the Buildings listed on Exhibit B (hereinafter called the "Leases");

(ii) all of Seller's interest in the following to the extent they relate to the ownership, use, leasing, maintenance, service, or operation of the Land or Buildings and are assignable without the consent of or payment to any other party: (i) contracts or agreements such as maintenance, service, or utility contracts, (ii) warranties, guaranties, indemnities and claims, (iii) development rights, utility capacity, governmental approvals, licenses and permits, and (iv) plans, drawings, specifications, surveys, engineering reports and environmental reports; and

(iii) All and singular the rights and appurtenances pertaining to any of the foregoing, including without limitation, the right of the Seller, if any, in and to adjacent streets, alleys, easements, rights-of-way and rights of ingress and egress thereto.

2. Purchase Price. The total purchase price for the Property is TWO MILLION ONE HUNDRED FIFTY THOUSAND AND 00/100 Dollars (\$2,150,000.00) (the "Purchase Price").

3. Payment of Purchase Price. The total purchase price for the Property shall be paid by Purchaser to Seller in the following manner:

a. Escrow Deposit. Within ten (10) business days after Purchaser's and Seller's execution of this Contract (and as a condition precedent to the effectiveness of this Contract), the cash amount of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the "Escrow Deposit") shall be deposited by Purchaser with Texas American Title Company, at its office at 715 Discovery Blvd., Suite 205, Cedar Park, Texas 78613, Attn: Julia Bechara (the "Title Company"). The Escrow Deposit shall be paid to Seller at the Closing (as defined herein) as a part of the payment of the Purchase Price or, if the Closing does not occur, shall be otherwise disbursed in accordance with this Contract.

b. Remainder of Purchase Price Due at Closing. Subject to the adjustments under paragraph 12 of this Contract, the balance of the Purchase Price shall be paid to Seller in good funds at the Closing by cashier's check or wired funds, which, in either case, will allow the Title Company to disburse those funds to Seller at the Closing.

4. [Intentionally Left Blank]

5. Survey. Purchaser has obtained a current survey of the property and Seller acknowledges that this has been made available to Seller. Purchaser has reviewed and approved the survey, and hereby waives any right to terminate this Contract as a result of the matters disclosed therein.

6. Owner Policy of Title Insurance; Title Commitment; Title Review.

a. Purchaser has previously caused to be prepared by the Title Company an updated written title report or commitment (the "Title Commitment") showing the status of title of the Land, which Title Commitment was issued by the Title Company on July 21, 2009, with an effective date of March 12, 2010 under G.F. No. 9691-08-1537. Purchaser has reviewed and approved the Title Commitment and all exceptions to title, including, without limitation, easements, liens, encumbrances, restrictions, conditions, or covenants affecting the Property referred to therein, and hereby waives any right to terminate this Contract as a result of the matters disclosed in the Title Commitment. Notwithstanding the foregoing, Seller has the absolute obligation to payoff and cause to be released of record all liens against the Property referenced in the Title Commitment at or prior to the Closing. All matters shown or referred to in the Title Commitment or Survey are referred to herein as the "Permitted Exceptions."

b. Seller, at Purchaser's expense, shall furnish to Purchaser at the Closing, or within a reasonable time thereafter, an Owner Policy of Title Insurance (without endorsements) (the "Owner Title Policy") (on a form prescribed by the Texas Department of Insurance) issued through the Title Company, insuring title to the Land and Buildings in Purchaser in the full amount of the Purchase Price, and containing only the Permitted Exceptions. Purchaser may, at its expense, obtain any available endorsements to the Owner Title Policy or may cause the Title Company to delete the "survey exception" from the Owner Title Policy without qualification or condition, except as to "any shortages in area" as long as the survey obtained by Purchaser is adequate for such purpose.

7. Leases. Seller warrants that Exhibit B, which is attached to this Agreement and incorporated by reference, is to Seller's actual knowledge a complete list of all leases, tenancies, rental agreements, and concession agreements presently encumbering the Property. Seller further warrants that:

a. To Seller's actual knowledge, no person or other legal entity has title or right to possession of the Property or any portion of the Property as a lessee, tenant, or concessionaire of Seller, except as shown on Exhibit B.

b. The rentals and other sums due or to become due under the Leases referred to in Exhibit B have not been assigned or encumbered by Seller and will not be assigned or encumbered by Seller before Closing, except as may have been previously done in connection with Seller's loan secured by the Property and which Seller will cause to be released or re-assigned at Closing.

8. Seller's Information. Seller has previously delivered or made available to Purchaser at Seller's offices the following (collectively, "Seller's Information"):

a. Fully executed copies of all Leases, including guaranties;

b. Copies of all contracts affecting the Property (including, without limitation, contracts relating to security, maintenance, material repairs, cleaning, etc.);

Purchaser has reviewed and approved the Seller's Information, and hereby waives any right to terminate this Contract as a result of the matters disclosed in the Seller's Information.

9. Covenants of Seller. Seller covenants and agrees with Purchaser as follows:

a. After the Effective Date, Seller will not extend, renew or amend any Leases without the prior written approval of Purchaser if doing so would violate the required cancellation provisions of the Leaseback Agreement (as hereinafter defined).

b. After the Effective Date, Seller will not, without the prior written consent of Purchaser, enter into any service, maintenance, or management agreement with respect to the Property which is not terminable upon thirty (30) days' prior notice. Any such agreements requiring Purchaser's approval which are entered into by Seller that are not approved or deemed to be approved by Purchaser shall not be a liability of Purchaser or the Property after the Closing.

c. From and after the Effective Date, Seller will continue to cause the Property to be covered by fire and extended coverage casualty insurance in an amount not less than the full replacement cost thereof.

d. From and after the Effective Date, Seller shall not, without the prior written consent of Purchaser, further assign, transfer, make subject to any lien or encumbrance, or

hypothecate any rents or the right of Seller to any rents due or to become due under the Leases, or any other rights of Seller under the Leases.

10. Seller's Representations and Warranties; Disclosures. Seller hereby represents and warrants to Purchaser the following, except as disclosed to the contrary to Purchaser in writing (including as part of the Seller Information):

a. The Leases delivered to Purchaser are true, correct, and complete copies thereof. Seller discloses to Purchaser that Seller has been advised that Time Warner intends to vacate the Property prior to the expiration of the term of its Lease.

b. Seller has received no written notice that the location, construction, occupancy, operation and use of the Property (including any improvements and equipment forming any part thereof) violate any applicable law, statute, ordinance, rule, regulation, order, or determination of any governmental authority in any material respect.

c. The Property and Seller are not, to Seller's current actual knowledge, currently subject to any existing, pending, or threatened investigation or inquiry by any governmental authority or to any remedial obligations under any law pertaining to the environment.

d. Except for the tenants under Leases, to Seller's knowledge there are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or trespassers.

e. There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws contemplated or pending against Seller or the Property.

f. At the Closing, Seller agrees to execute an affidavit that there are no unpaid bills for labor or materials furnished to Seller in connection with the Property that would cause a mechanic's or materialmen's lien to be filed on the Property.

g. To Seller's knowledge, there is no right of first refusal, option to purchase, purchase contract or other prior right of any party to purchase any portion of the Property.

EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT AND IN THE TITLE WARRANTY TO BE INCLUDED IN THE DEED (AS HEREAFTER DEFINED), THE SALE OF THE PROPERTY IS MADE ON AN "AS IS," "WHERE IS" BASIS AND WITH ALL FAULTS, AND PURCHASER EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENTS OF SELLER HEREIN, EXCEPT AS OTHERWISE EXPRESSLY SPECIFIED HEREIN, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, TENANTABILITY OR FITNESS FOR A

PARTICULAR PURPOSE, IN RESPECT OF THE PROPERTY. ANY DISCLOSURES MADE BY SELLER, WHETHER IN THE SELLER'S INFORMATION, IN THIS CONTRACT OR OTHERWISE, SHALL NOT BE CONSTRUED TO REQUIRE SELLER TO MAKE ANY FURTHER DISCLOSURES WITH RESPECT TO THOSE OR ANY OTHER MATTERS.

11. Closing; Closing Documents.

a. Closing; Possession. The Closing shall take place at the offices of the Title Company on or before August 31, 2010, or such time, date and place as Purchaser and Seller may agree. Time is of the essence with respect to the Closing Date and the delivery at the Closing of the Purchase Price.

b. Seller's Closing Documents. At the Closing Seller shall deliver or cause to be delivered to Purchaser each of the following:

(i) Deed of Conveyance. A duly executed and acknowledged special warranty deed ("Deed"), in the form as shown in Exhibit "C" attached hereto, containing a description of the Land and conveying title to the Land and Buildings to the State of Texas, free and clear of any and all liens, reservations, restrictions, easements, security agreements, pledges and other encumbrances, except the Permitted Exceptions, to which this sale and the conveyance of the Property shall be made and accepted subject.

(ii) Assignment of Leases. A duly executed assignment of leases ("Assignment"), assigning the Leases and the other intangible property described in Paragraph 1.c.(ii) above to Purchaser.

(iii) Owner Policy of Title Insurance. The Owner Policy of Title Insurance (as described in and subject to the requirements of paragraph 6.b above) containing only the Permitted Exceptions.

(iv) Other Documents and Items. Any other documents and items required by this Contract to be delivered by Seller at the Closing.

c. Purchaser's Closing Documents. At the Closing Purchaser, at Purchaser's expense, shall deliver to Seller the following:

(i) Payment of Purchase Price. The Purchase Price, less the Escrow Deposit, in the form required in paragraph 3.b. above, and Purchaser shall cause the Title Company to disburse the Escrow Deposit to Seller concurrently with the Closing of the sale.

(ii) Other Documents. Any other documents or items required by this Contract to be delivered by Purchaser at the Closing.

12. Adjustments at Closing. The following prorations and adjustments shall be made at the Closing and, as the case may be, deducted from or added to the amount Purchaser is required to pay at the Closing under paragraph 3.b. above:

a. Taxes Ad valorem taxes for the year of Closing shall be prorated at the Closing Date and shall be adjusted in cash at the closing. If the tax rate has not been fixed for that year, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuation.

b. Title Insurance and Other Closing Expenses. Except as is otherwise provided herein, Purchaser shall pay all customary closing expenses and the title policy premium, and each party shall be responsible for the payment of its own attorney's fees.

13. Remedies Upon Default. Subject to the additional remedial provisions of set forth elsewhere in this Agreement, if Seller fails to complete this sale in accordance with the terms and provisions of this Contract for any reason except Purchaser's default, Purchaser shall have, as Purchaser's only remedies against Seller, the option of (a) terminating this Contract by giving written notice to Seller at or prior to the Closing, whereupon the Escrow Deposit shall be returned to Purchaser by the Title Company, and Purchaser and Seller shall have no other or further liability or obligation to each other, or (b) enforcing specific performance of the Contract. If Purchaser fails to complete this sale in accordance with the terms and provisions of this Contract for any reason except Seller's default, Seller shall have, as Seller's only remedies against Purchaser, the option of (a) terminating this Contract by giving notice to Purchaser and to the Title Company, whereupon the Escrow Deposit shall immediately be paid to Seller as consideration for the right given to Purchaser in this Contract to purchase the Property (it being agreed that it would be extremely difficult, if not impossible, to calculate the actual damages to Seller), after which Purchaser and Seller shall have no other or further liability or obligation to each other hereunder, and this Contract shall be deemed to have been terminated on the date Seller notifies Purchaser of Seller's election of this right to terminate this Contract, or (b) enforcing specific performance of the Contract.

14. Casualty. Neither party shall have the option to terminate this Contract on account of any fire or other casualty.

15. Notices. Any notices required or permitted to be given under this Contract shall be in writing and shall be deemed to be given (a) when actually received by that person, or (b) three (3) days after being deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address indicated herein, or to a different address as previously given in a notice to the other party. A copy of any notice given to Seller shall be given at the same time and in the same manner as the notice to Seller to:

A copy of any notice given to Purchaser shall be given at the same time and in the same manner as the notice to Purchaser to:

Sheets & Crossfield, P.C.
Attn: Charlie Crossfield
309 East Main Street
Round Rock, Texas 78664
512/255-8877

16. Title Company as Escrow Agent. The parties hereto by their execution hereof hereby appoint the Title Company to act as escrow agent in retaining any closing documents and deposits of funds in accordance with the terms of this Contract. In handling any escrowed funds, the Title Company shall be governed by the terms contained herein and shall not be responsible for the validity, sufficiency or enforceability of any of the terms of this Contract. The Title Company shall not be charged with any notice, fact or information not specifically set forth herein. The Title Company shall be entitled to rely on any written notice, demand or document which in good faith is believed to be genuine, and it shall not be required to inquire as to identity, authority or rights of the undersigned. The Title Company shall not be liable for any act or omission by or on behalf of the Title Company with respect to this Contract, except in cases of gross negligence or willful misconduct, provided, however, the Title Company shall be liable for the funds actually deposited in its possession. The Title Company shall not be authorized to apply any escrowed funds to any indebtedness of any party hereto or withhold the disbursement of such funds for reasons except as provided in this Contract.

17. Miscellaneous.

a. Complete Agreement; Headings; Waiver. This Contract contains the complete agreement of the parties and cannot be amended or modified except by written agreement signed by Seller and Purchaser. The paragraph headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the scope, content or extent of this Contract or any part of it. If any portion of this Contract is held by a court of proper jurisdiction to be invalid or inoperative, then so far as is reasonable and possible the remainder of the Contract shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provisions of this Contract shall not be deemed to be a waiver of that party's right to enforce against the other party the same or any other term or provision. The terms and provisions of this Contract shall not merge with, or be extinguished or otherwise affected by, any subsequent conveyance or instrument between the parties, unless the instrument specifically so states and is signed by both parties.

b. Governing Law. This Contract and the obligations under this Contract shall be construed in accordance with, governed by, and shall be subject to, the laws of the State of Texas, and venue for any disputes hereunder shall be Travis County, Texas.

c. Execution in Counterparts. The Contract can be executed in counterparts, each of which shall be an original and, upon the delivery to the Title Company of one or more of the contracts signed by all parties, together will constitute a fully executed and binding contract. As soon as possible, the parties agree to exchange contracts so that each party will have a fully executed contract.

d. Effective Date of Contract. For purposes of this Contract it is agreed that the effective date of this Contract shall be the date on which a fully executed copy of this Contract, signed by both Seller and Purchaser, is deposited with the Title Company along with the Initial Escrow Deposit provided for herein (the "Effective Date"). The Initial Escrow Deposit receipt issued by the Title Company shall be conclusive evidence of the Effective Date.

e. Construction of Agreement. Seller and Purchaser acknowledge each to the other that both they and their counsel have reviewed and revised this Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or exhibits to it.

f. Business Days. If any deadline, date or time for performance of any obligation hereunder falls on a Saturday, Sunday, legal holiday or day in which banks in Williamson County, Texas are closed for the normal conduct of business, then such deadline, date or time for performance shall be automatically extended to the first day which is not a Saturday, Sunday, legal holiday or day when banks in Williamson County, Texas are closed for the normal conduct of business.

g. Threat of Condemnation. This contract is being entered into and executed by Seller in lieu of and under the threat of condemnation proceedings to acquire the Property.

SELLER:

KAFII DEVELOPMENT CO.

By: _____
Its: _____

Address: _____

Date signed by Seller:

_____, 2010.

PURCHASER:

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: _____

Mike Heiligenstein
Executive Director

Address: 301 Congress Avenue, Suite 650
Austin, Texas 78701

Date signed by Purchaser:

_____, 2010

Exhibits:

- Exhibit A - Description of the Land
- Exhibit B –List of Leases
- Exhibit C – Form of Special Warranty Deed