

13



# City of West Allis Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214

File Number	Title	Status
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R-2004-0200      Resolution      In Committee

Resolution to approve a Purchase and Sale Agreement by and between the Community Development Authority of the City of West Allis and Fluid Technology, Inc., d/b/a Wisconsin Tank Company for the property located 1445 South 66 Street

Introduced: 6/15/2004

Controlling Body: Safety & Development Committee

### COMMITTEE RECOMMENDATION

*ADOPT AS ~~AGREEMENT~~ SUBJECT TO APPROVAL BY THE CITY ATTORNEY*

ACTION DATE:

6/9/04

MOVER	SECONDER	
_____	_____	Barczak
_____	_____	Czaplewski
_____	_____	Dobrowski
_____	_____	Kopplin
_____	_____	Lajsic
_____	_____	Narlock
✓	_____	Reinke
_____	_____	Sengstock
_____	✓	Vitale
_____	_____	Weigel

AYE	NO	PRESENT	EXCUSED
✓			
✓			
✓			
✓			
✓			

TOTAL

5      -

### SIGNATURE OF COMMITTEE MEMBER

*[Signature]*

Chair      Vice-Chair      Member

### COMMON COUNCIL ACTION

*adopt ~~as presented~~ subject to approval by the City Attorney*

ACTION DATE:

6-15-04

MOVER	SECONDER	
_____	_____	Barczak
_____	_____	Czaplewski
_____	_____	Dobrowski
_____	_____	Kopplin
✓	_____	Lajsic
_____	_____	Narlock
_____	_____	Reinke
_____	_____	Sengstock
_____	✓	Vitale
_____	_____	Weigel

AYE	NO	PRESENT	EXCUSED
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			

TOTAL

10      -



# City of West Allis

7525 W. Greenfield Ave.  
West Allis, WI 53214

## Resolution

**File Number: R-2004-0200**

**Final Action:  
JUN 15 2004**

Resolution to approve a Purchase and Sale Agreement by and between the Community Development Authority of the City of West Allis and Fluid Technology, Inc., d/b/a Wisconsin Tank Company for the property located 1445 South 66 Street

WHEREAS, the Community Development Authority of the City of West Allis (the "Authority") will acquire ownership of certain property located at 1445 South 66 Street, (the "Property"); and,

WHEREAS, the Authority, by Resolution No.483, adopted June 8, 2004, approved the purchase of certain real property at 1445 South 66 Street from Fluid Technology, Inc., d/b/a Wisconsin Tank Company.; and,

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis, pursuant to Wis. Stats. 66.431(9)(a)1., that the Community Development Authority of the City of West Allis is authorized to proceed with the acquisition of certain real property located at 1445 South 66 Street, as described in the Purchase and Sale Agreement and the Preliminary Agreement for the Purchase of the Pressed Steel Tank Property, hereby attached and made a part hereof.

BE IT FURTHER RESOLVED that the Director of Development be and is hereby authorized to execute and deliver the Agreements on behalf of the City of West Allis.

BE IT FURTHER RESOLVED that the City Attorney be and is hereby authorized to make such non-substantive changes, modifications, additions and deletions to and from the various provisions of the Agreements, including any and all attachments, exhibits, addendums and amendments, as may be necessary and proper to correct inconsistencies, eliminate ambiguity and otherwise clarify and supplement said provisions to preserve and maintain the general intent thereof, and to prepare and deliver such other and further documents as may be reasonably necessary to complete the transactions contemplated therein.

cc: Department of Development

Dev-R350\jmg\6-15-04

ADOPTED

June 15, 2004

Paul M. Ziehler

Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED

June 18 2004

Jeannette Bell

Jeannette Bell, Mayor

**John Stibal**

**To:** Scott Post (E-mail)  
**Subject:** Pressed Steel Tank

Scott,

Bob Darling was very concerned that with the City's ability to terminate the loan that this contingency would diminish his capacity to borrow additional funds from a bank. He requested the changes be made as noted below. I don't think it is a big issue because we could always litigate for breach of contract if PST used the loans funds for something other than the expressed permitted uses. More importantly we could always use building condemnation which is more onerous anyway.

**2.4 Use of Loan Funds.** The loans set forth in Section 2.2(b) and 2.3 shall be used exclusively for relocation of Pressed Steel Tank Co., Inc.'s business from the Property, infrastructure improvements for the building Pressed Steel Tank Co., Inc. is moving to, purchase and refurbishment of equipment, payment of back taxes and sewer and water bills on the Property and for no other purpose. Seller shall provide to Purchaser an accounting of each expenditure within ~~five (5)~~ **thirty (30)** business days. ~~If Purchaser is of the opinion that the expenditure is not for relocation purposes, it shall notify Seller in writing and request an explanation of the expenditure. If Purchaser is not satisfied with the explanation, it may, at its sole discretion, after ten (10) days after the initial request for explanation, call all loans herein due, with interest. The calling of the loans due shall terminate this Agreement and neither party shall have any obligation hereunder other than those obligations, which by their terms expressly survive the termination of this Agreement ("Surviving Obligations"). The loan agreements (including the loan under Section 2.2(e)), mortgage and obligations to pay therein shall constitute Surviving Obligations.~~

Give me a call when you have a moment.

John F. Stibal  
Director of Development

7525 W. Greenfield Ave.  
West Allis WI. 53214

Office: 414-302-8462  
Fax: 414-302-8401

Email [jstibal@ci.west-allis.wi.us](mailto:jstibal@ci.west-allis.wi.us)  
WEB Site: [www.ci.west-allis.wi.us](http://www.ci.west-allis.wi.us)

**"The significant problems we face  
cannot be solved by the same level of thinking  
we were at when we created them."**

**-- Albert Einstein**

PURCHASE AND SALE AGREEMENT

by and between

PRESSED STEEL TANK CO., INC.  
d/b/a Wisconsin Tank Company

as Seller

and

THE COMMUNITY DEVELOPMENT AUTHORITY  
OF THE CITY OF WEST ALLIS

as Purchaser

Dated:

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## REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement"), dated as of 6/18, 2004, (the "Effective Date") is made by and between the COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS, a body politic, organized and existing under the laws of the State of Wisconsin ("Purchaser") and PRESSED STEEL TANK CO., INC., a Delaware Corporation, d/b/a Wisconsin Tank Company, ("Seller").

WHEREAS, Seller is the owner of a certain parcel of improved real property which parcel Seller is desirous of selling and Purchaser is desirous of purchasing, upon the terms and conditions described herein.

In consideration of the mutual covenants and representations herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

### SECTION 1

#### PURCHASE AND SALE

- 1.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell, transfer and convey to Purchaser, and Purchaser hereby agrees to purchase from Seller, all of the Seller's, right, title and interest in and to the following described property (herein collectively called the "Property"):
- (a) Land. Seller's interest as fee owner of that certain parcel of land (the "Land") located in the area of 1445 South 66<sup>th</sup> Street in the City of West Allis, Milwaukee County, Wisconsin, consisting of approximately 9.967 acres, being more particularly described on Exhibit "A" attached hereto and made a part hereof.
  - (b) Easements. Seller's interest in and to all easements, if any, benefiting the Land or the Improvements (as hereinafter defined).
  - (c) Rights and Appurtenances. Seller's interest in and to all rights and appurtenances pertaining to the Land, including any right, title and interest of Seller in and to adjacent streets, alleys or rights-of way, all development rights, air rights, water and water rights related to the land and the improvements.
  - (d) Improvements. All buildings, structures and improvements (the "Improvements") located in and on the Land.
  - (e) Effective Date. The Effective Date shall be the date fully executed copies are approved by the West Allis Community Development Authority and funding is approved by the City of West Allis Common Council and Mayor as provided in Section 1.2.
- 1.2 Purchaser Approval. This Agreement is subject to approval by the West Allis Community Development Authority and funding is approved by the City of West Allis and Mayor. In the event that Purchaser does not acknowledge satisfaction of this contingency within thirty (30) days of the date of this Agreement, then and in that event this Agreement shall terminate and neither party shall have any further liability under this Agreement.



SECTION 2  
PURCHASE PRICE

- 2.1 Purchase Price. The purchase price (the "Purchase Price") for the Property shall be Five Hundred Thousand Dollars (\$500,000) and shall be paid in cash by Purchaser to Seller at the Closing (as defined in Section 5.1) by wire transfer in accordance with wire transfer instructions to be provided by Seller.
- 2.2 Relocation Payment. In addition to the purchase price and in full payment of any and all relocation and other rights Seller may have under Chapter 32 of the Wisconsin Statutes and Chapter Comm. 202 of the Wisconsin Administrative Code, Purchaser agrees to pay loan to Seller the additional sum of Three Million Dollars (\$3,000,000) as follows:
- (a) \$2,250,000 cash payment on April 1, 2005.
- (b) \$ 250,000 First Loan within two (2) business days of signing of this Agreement, in a form substantially equivalent to the loan document attached hereto as Exhibit "A" and secured by a mortgage on the Property attached hereto as Exhibit "B". The uses to which this loan may be put is set forth in Section 2.5. If outstanding back taxes and sewer and water bills on the Property are not paid within sixty (60) days of receipt of this loan, the loan shall become due and payable at an interest rate of twelve percent (12%) per year until paid.
- (c) \$ 500,000 Second Loan on April 1, 2005 shall be secured by a Business Security Agreement on new and refurbished equipment with no prior security interest thereon. At closing, Seller may pay the loan in full or shall provide additional security in a form acceptable to the City Attorney to replace the mortgage.
- 2.3 Advance Relocation Loan. Within two (2) business days of the signing of this Agreement, the Purchaser agrees to loan to Seller the sum of \$500,000.00 as a partial advance on the Relocation payment set forth in Section 2.2(a). The form of the loan agreement shall be substantially equivalent to the loan document attached hereto as Exhibit "C" and secured by a mortgage on the Property attached hereto as Exhibit "D". Upon closing, the loan and any interest thereon shall be forgiven and said sum shall constitute payment of the Purchase Price under Section 2.1. If the parties fail to close by November 30, 2004, the Advance Relocation Loan, plus interest at an interest rate of twelve percent (12%) per year, shall be due and payable forthwith.
- 2.4 Proof of Title. Prior to the loans set forth in Section 2.2(a) and 2.3 being made, Seller shall present to Purchaser, in a form acceptable to the West Allis City Attorney, proof that title to the Property vests in Seller.
- 2.5 Use of Loan Funds. The loans set forth in Section 2.2(b) and 2.3 shall be used exclusively for relocation of Pressed Steel Tank Co., Inc.'s business from the Property, infrastructure improvements for the building Pressed Steel Tank Co., Inc. is moving to, purchase and refurbishment of equipment, payment of back taxes and sewer and water bills on the Property and for no other purpose. Seller shall provide to Purchaser an accounting of each expenditure within thirty (30) days. If Purchaser is of the opinion that the expenditure is not for relocation purposes, it shall notify Seller in writing and request an explanation of the expenditure. If Purchaser is not satisfied with the explanation, it may, at its sole discretion, after ten (10) days after the initial request for explanation, call all loans herein due, with interest. The calling of the loans due shall terminate this Agreement and neither party shall have any obligation hereunder other than those obligations, which by their terms expressly survive the termination of this Agreement ("Surviving Obligations"). The loan agreements (including the loan under Section 2.2(c)), mortgage and obligations to pay therein shall constitute Surviving Obligations.
- 2.6 Condemnation. If this Agreement terminates for any reason and the Purchaser acquires the Property through eminent domain, any outstanding loan balance, together with the interest due thereon, shall be applied to the just compensation due Seller. This provision shall survive termination.

## SECTION 3

### DELIVERIES, TITLE, EVALUATIONS AND REPRESENTATIONS

- 3.1 Delivery Obligations. Seller shall obtain and shall deliver to Purchaser (at Seller's expense), the following:
- (a) Title Commitment. Within twenty (20) days from the Effective Date, Seller shall provide, at Seller's expense, a current abstract of title updated to the date of Contract or thereafter. Upon receipt of said abstract of title, Purchaser shall obtain, at Purchaser's expense a commitment for an Owner's Policy of Title Insurance (the "Title Commitment") with respect to the Property within twenty (20) days after receipt of the update abstract from Seller, issued by Lawyers Title Insurance Corporation or other reputable title insurance company or agent, selected by Purchaser and reasonably acceptable to Seller (the "Title Company"), and legible copies of any restrictive covenants, easements, and other items listed as title exceptions therein; and
  - (b) Survey. Within five (5) days from the Effective Date, Seller shall provide Purchaser a copy of any land survey of the Property in Seller's possession. At Purchaser's option, Purchaser may conduct, at Purchaser's expense, a land survey ("Survey") of the Property within twenty (20) days after the Effective Date. Seller hereby grants access to the Property for survey purposes.
- 3.2 Title. The Property is sold and is to be conveyed free and clear from all liens, restrictions and encumbrances, subject to:
- (a) All present and future zoning and building laws, ordinances and regulations of the State, County and/or municipality in which the Property lies;
  - (b) The lien of real property taxes for the current tax year, subject to apportionment as hereinafter provided;
  - (c) Any easements, covenants, restrictions and agreements now of record, provided as to any such matter the same do not substantially interfere with the Purchaser's proposed use and enjoyment of the Property.
- 3.3 Title Commitment and Updated Survey.
- (a) In the event (i) the update, if any, of the Survey obtained by Purchaser shows any easement, right-of-way, encroachment or other matter affecting the Land or Improvements that is not acceptable to Purchaser, Purchaser shall, not later than five (5) business days after receipt of the Survey Agreement, or (ii) any exceptions appear in the Title Commitment (other than the standard printed exceptions set forth in the standard form of Title Commitment) that are not acceptable to Purchaser, Purchaser shall, not later than five (5) business days after receipt of the Survey update, the Title Commitment and copies of all documents referred to as additional exceptions in the Title Commitment (time being of the essence) (the "Title Approval Period"), notify Seller in writing of such facts, the reasons therefor and the curative steps that would remove the basis for Purchaser's objection ("Purchaser's Title Objections"). Upon the expiration of the Title Approval Period, except for Purchaser's Title Objections, and any matters not then of record or otherwise known to Purchaser, Purchaser shall be deemed to have accepted the form and substance of the update of the Survey, all matters shown or addressed thereon, all then existing conditions of title to the Land and Improvements which are a matter of record including, without limitation, any then recorded easement, right of way, encroachments, conflict, discrepancies, overlapping of improvements, liens, encumbrances, restrictions, conditions, covenants, exceptions or other matter with respect thereto and all items shown or addressed in the Title Commitment (collectively, the "Approved Title Matters").

Seller agrees to execute and deliver to the Title Company on Closing such customary affidavits or certifications as are reasonably required by the Title Company in connection with the deletion of or insurance over the printed exceptions for matters arising subsequent to the effective date of the Title Commitment but prior to recording of the insured instrument, mechanics liens, broker liens, judgements against similarly named parties, and absence of tenants.

- (b) Notwithstanding anything to the contrary contained herein, Seller shall have no obligation to take any steps or bring any action or proceeding or otherwise to incur any effort or expense whatsoever to eliminate or modify any of Purchaser's Title Objections (other than discharging the lien or any mortgage or deed or trust granted by Seller); provided, however, Seller, at its sole option, may attempt to eliminate or modify all or a portion of Purchaser's Title Objections to Purchaser's reasonable satisfaction prior to the Closing Date or within such additional period of time that the parties may agree to, in writing. In the event Seller is unable or unwilling to attempt to eliminate or modify all of Purchaser's Title Objections to the reasonable satisfaction of Purchaser, Seller shall provide written notice to Purchaser of those objections Seller will not attempt or be able to cure ("Seller's Notice"). Purchaser may (as its sole and exclusive remedy) terminate this Agreement by delivering notice thereof in writing to Seller by the later to occur of (i) the Closing Date (as the same may be adjourned as provided in this Agreement), or (ii) ten (10) business days after Seller's Notice. If Purchaser shall duly give such termination notice, then this Agreement shall thereupon terminate except for Surviving Obligations.
- (c) The term "Permitted Encumbrances" as used herein includes: (i) the matters set forth in Section 3.2, (ii) all of the Approved Title Matters, (iii) any of Purchaser's Title Objection that remains uncured, for whatever reason, at the later to occur of (A) Closing hereunder (as the same may be adjourned as provided in this Agreement), or (B) ten (10) business days after Seller's Notice, and (iv) liens for real property taxes, assessments, and water and sewer meter charges which are not due and payable as of the Closing Date and/or which are apportioned pursuant to Section 5.3. The term "Permitted Encumbrances" shall not include any mortgage lien or deed of trust granted by Seller.
- (d) Purchaser may, at or prior to Closing, notify Seller in writing of any exception to title that is not in accordance with this Agreement and which (i) is first raised by the Title Company after the issuance of the Title Commitment and following the expiration of the Title Approval Period but before the Closing and (ii) was not otherwise known to Purchaser prior to the expiration of the Title Approval Period; provided the Purchaser must notify Seller of such new objection to title within two (2) business days after receipt of such exception. If Purchaser sends such notice to Seller, Purchaser and Seller shall have the same rights and obligations with respect to such notice as apply to Purchaser's Title Objections under Sections 3.3 (b) and (c) hereof.

### 3.4 Evaluations.

#### 3.4.1 Physical Evaluations.

- (a) Commencing on the Effective Date and for the period of sixty (60) days thereafter (the "Evaluation Period") and for such additional period of time as the parties may agree to, the parties shall equally share in the cost and expense necessary to complete two reports prepared by the firm of Arcadis, Geraghty & Miller, Inc. relative to refinement of demolition and decommissioning costs and refinement of remediation of environmental contaminants and footings and foundation removal costs. Seller shall provide Purchaser with access to the Land and Improvements during the Evaluation Period and will cooperate with Purchaser and will promptly provide Purchaser with copies of any environmental investigation reports it has received prior to and during the Evaluation Period. Such Physical Evaluations will be conducted in a manner consistent with Section 3.4.1.

(b) If such Physical Evaluations reveal any physical or environmental condition, which is unacceptable to Purchaser in its sole discretion, Purchaser may (as its sole and exclusive remedy) terminate this Agreement by delivering notice thereof in writing to Seller on or before the expiration of the Evaluation Period. If Purchaser shall duly give such termination notice, then this Agreement shall terminate, and upon such termination neither party shall have any obligation hereunder except that, Purchaser shall return all reports and documents furnished to Purchaser by Seller to Seller within (2) days of such termination, and other than the Surviving Obligations. If Purchaser does not notify Seller of such termination in writing prior to the expiration of the Evaluation Period, all such evaluations, inspections, tests, and investigations of the Property, and all conditions relating to the Property (subject to Sections 7 and 9), shall be deemed satisfactory to Purchaser, and Purchaser shall have no further right to terminate this Agreement pursuant to this Section 3.4.1(b).

3.4.2 Other Evaluations. During the Evaluation Period, Purchaser may also inspect (i) all of Seller's records, if any, pertaining to the operation of the Property (excluding Seller's corporate records, internal memoranda, financial projections and similar privileged information), and (ii) environmental reports and records. The foregoing may be done at any reasonable time during ordinary business hours upon twenty-four (24) hours prior written notice to Seller, at Purchaser's sole cost and in a manner not disruptive to the operation of the Property. During the Evaluation Period, Purchaser shall determine, in Purchaser's sole discretion, if the Property is suitable for Purchaser's purchase and/or intended uses and whether Purchaser is satisfied, in Purchaser's sole discretion, with the information obtained during its investigation and inspections referred to in this Section 3.4.2. If Purchaser is not satisfied with the results of its investigations pursuant to this Section 3.4.2 or the suitability of the Property, Purchaser may give written notice thereof to Seller on or before the expiration of the Evaluation Period (the "Disapproval Notice") whereupon this Agreement shall terminate and neither party shall have any further obligation hereunder except for the Surviving Obligations.

3.4.3 Contingency Notification Date. All of the contingencies set forth in this Agreement will expire on August 31, 2004. In the event and to the extent Purchaser has not sent a notice specifically reserving the right to continue any foregoing contingency, each contingency shall be waived and the Purchaser's obligations to consummate the purchase transaction contemplated herein shall be binding in all respects, subject to Seller's compliance with the terms and conditions set forth herein.

3.5 Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller that:

- (a) Purchaser is a body politic, duly organized and existing under and by virtue of the laws of the State of Wisconsin, and has the power to enter into this Agreement and to execute and deliver this Agreement and to perform all duties and obligations imposed upon it hereunder, and Purchaser has obtained all necessary corporate, partnership or other organizational authorizations required in connection with the execution, delivery and performance of this Agreement and the transaction contemplated herein and has obtained the consent of all entities and parties (whether private or governmental) necessary to bind Purchaser to this Agreement;
- (b) Neither the execution nor the delivery of this Agreement, nor the consummation of the purchase and sale transaction contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or will result in the breach of any of the terms, conditions or provisions of any agreement or instrument to which Purchaser is a party or by which Purchaser, or any of Purchaser's assets is bound; and
- (c) Except to the limited extent specifically and expressly set forth in this Agreement, Purchaser shall accept the Property "AS IS" and "WHERE IS" at Closing, and Purchaser has not relied upon and will not rely upon, and Seller is not liable for or bound by any, express or implied, warranties, guarantees,

statements, representations or information pertaining to the Property or relating thereto made or furnished by Seller or any of its advisors, or any of their agents, representatives, contractors, employees, attorneys or brokers, to whomever made or given, directly or indirectly, verbally or in writing, unless specifically and expressly set forth in this Agreement.

The Purchaser's representations and warranties set forth in this Section 3.5 shall survive the Closing or termination of this Agreement. As a condition precedent to Seller's obligation to close the purchase and sale transaction contemplated in this Agreement, Purchaser's representations and warranties contained herein must remain and be true and correct as of the Closing Date. Prior to the Closing Date, Purchaser shall notify Seller in writing of any facts, conditions or circumstances which render any of the representations and warranties set forth in this Section 3.5 in any way inaccurate, incomplete, incorrect or misleading.

3.5.1. Release of Seller as to Environmental Conditions. From and after Closing, Purchaser waives, and forever discharges Seller, its directors, officers, shareholders, employees and agents and their respective heirs successors, personal representatives and assigns (collectively the "Released Parties"), of and from any and all suits, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorneys' fees and expense of whatever kind and nature, in law or in equity, known or unknown (collectively the "Liability"), that Purchaser ever had, now has, or in the future may have, against any of the released Parties, based upon, or arising directly out of the environmental state of the Property subsequent to Closing. Only to the extent that Seller has fully disclosed all known potential environmental liabilities to Purchaser which exist prior to Closing, Purchaser shall release Seller from all claims based upon or arising out of the environmental state of the Property prior to Closing.

3.5.2 Purchaser's Indemnity of Seller as to Environmental Conditions. Only to the extent that Seller has fully disclosed to Purchaser all potential environmental liabilities known to Seller, Purchaser agrees to indemnify, save harmless and defend the Released Parties from and against any and all liabilities that any of the Released Parties may incur, or become responsible for, as a result of any claims by any governmental authorities or third parties, based upon, or arising directly out of the environmental state of the property.

3.6 Seller's Representations and Warranties. Seller represents and warrants to Purchaser that:

- (a) Seller is a Delaware corporation in good standing under the laws of the States of Delaware and Wisconsin and has the full right, power, and authority, without the joinder of any other person or entity, to enter into, execute and deliver this Agreement, and to perform all duties and obligations imposed on it under this Agreement; and Seller has obtained all necessary corporate, or other organizational authorizations required in connection with the execution, delivery and performance of this Agreement and the transaction contemplated herein and has obtained the consent of all entities and parties (whether private or governmental) necessary to bind Seller to this Agreement
- (b) Neither the execution nor the delivery of this Agreement, nor the consummation of the purchase and sale contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or will result in the breach of any of the terms, conditions, or provisions of any agreement or instrument to which it is a party or by which it, or any of its assets is bound; and
- (c) Seller has not granted to any party any purchase option or right of first refusal, to purchase the Property, nor has Seller entered into any lease of the Land or Improvements.
- (d) Seller has not entered into any operating agreements, service contracts, equipment leases, or any other obligations, which Purchaser will be required to assume on, Closing.

The Seller's representations and warranties set forth in this Section 4.6 shall survive the Closing or termination of this Agreement. As a condition precedent to Purchaser's obligation to close the purchase

statements, representations or information pertaining to the Property or relating thereto made or furnished by Seller or any of its advisors, or any of their agents, representatives, contractors, employees, attorneys or brokers, to whomever made or given, directly or indirectly, verbally or in writing, unless specifically and expressly set forth in this Agreement.

The Purchaser's representations and warranties set forth in this Section 3.5 shall survive the Closing or termination of this Agreement. As a condition precedent to Seller's obligation to close the purchase and sale transaction contemplated in this Agreement, Purchaser's representations and warranties contained herein must remain and be true and correct as of the Closing Date. Prior to the Closing Date, Purchaser shall notify Seller in writing of any facts, conditions or circumstances which render any of the representations and warranties set forth in this Section 3.5 in any way inaccurate, incomplete, incorrect or misleading.

3.5.1. Release of Seller as to Environmental Conditions. From and after Closing, Purchaser waives, and forever discharges Seller, its directors, officers, shareholders, employees and agents and their respective heirs successors, personal representatives and assigns (collectively the "Released Parties"), of and from any and all suits, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorneys' fees and expense of whatever kind and nature, in law or in equity, known or unknown (collectively the "Liability"), that Purchaser ever had, now has, or in the future may have, against any of the released Parties, based upon, or arising directly out of the environmental state of the Property subsequent to Closing. Only to the extent that Seller has fully disclosed all known potential environmental liabilities to Purchaser which exist prior to Closing, Purchaser shall release Seller from all claims based upon or arising out of the environmental state of the Property prior to Closing.

3.5.2 Purchaser's Indemnity of Seller as to Environmental Conditions. Only to the extent that Seller has fully disclosed to Purchaser all potential environmental liabilities known to Seller, Purchaser agrees to indemnify, save harmless and defend the Released Parties from and against any and all liabilities that any of the Released Parties may incur, or become responsible for, as a result of any claims by any governmental authorities or third parties, based upon, or arising directly out of the environmental state of the property.

3.6 Seller's Representations and Warranties. Seller represents and warrants to Purchaser that:

- (a) Seller is a Delaware corporation in good standing under the laws of the States of Delaware and Wisconsin and has the full right, power, and authority, without the joinder of any other person or entity, to enter into, execute and deliver this Agreement, and to perform all duties and obligations imposed on it under this Agreement; and Seller has obtained all necessary corporate, or other organizational authorizations required in connection with the execution, delivery and performance of this Agreement and the transaction contemplated herein and has obtained the consent of all entities and parties (whether private or governmental) necessary to bind Seller to this Agreement
- (b) Neither the execution nor the delivery of this Agreement, nor the consummation of the purchase and sale contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or will result in the breach of any of the terms, conditions, or provisions of any agreement or instrument to which it is a party or by which it, or any of its assets is bound; and
- (c) Seller has not granted to any party any purchase option or right of first refusal, to purchase the Property, nor has Seller entered into any lease of the Land or Improvements.
- (d) Seller has not entered into any operating agreements, service contracts, equipment leases, or any other obligations, which Purchaser will be required to assume on, Closing.

The Seller's representations and warranties set forth in this Section 3.6 shall survive the Closing or termination of this Agreement. As a condition precedent to Purchaser's obligation to close the purchase

and sale transaction contemplated in this Agreement, Seller's representations and warranties contained herein must remain and be true and correct as of the Closing Date. Prior to the Closing Date, Seller shall notify Purchaser in writing of any facts, conditions or circumstances which render any of the representations and warranties set forth in this Section 3.6 in any way inaccurate, incomplete, incorrect or misleading; provided, however, that the granting by Seller after the date hereof of any purchase right or option to any third party which is expressly subject and subordinate to Purchaser's rights hereunder and which shall not be binding upon Purchaser shall not be a breach or default under this Agreement.

#### SECTION 4

##### NO REPRESENTATIONS OR WARRANTIES BY SELLER: ACCEPTANCE OF PROPERTY

- 4.1 "As Is" Purchase. Seller warrants and certifies to Purchaser that Seller has disclosed all potential environmental liabilities, which are known to Seller. Purchaser represents that, upon completion of its inspections of the Property as contemplated under Sections 3.4.1. and 3.4.2, Purchaser will have made all investigations as it deems necessary or appropriate and will be relying solely upon its inspection and investigations of the Property for all purposes whatsoever, including but not limited to, the determination of the condition of the structures, improvements, soils, subsurfaces, drainage, surface and groundwater quality, and all other physical characteristics; governmental laws and regulations; access; encroachments; acreage and other survey matters; and the character and suitability of the Property. In addition, Purchaser acknowledges that the Property is being purchased and will be conveyed "as is" with all faults and defects, as of the date of Closing. There have been no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Property, its condition, or any other matters whatsoever made to or furnished to Purchaser by Seller or any employee or agent of Seller, except as specifically set forth in this Agreement.
- 4.2 Assumption of Environmental Conditions. Seller warrants and certifies to Purchaser that Seller has disclosed all potential environmental liabilities, which are known to Seller. Purchaser acknowledges that the Property has been utilized as a motor carrier facility, and that, as a result of this use, physical changes, including gasoline and chemical seepage, may have occurred on the Property. Based upon Seller's certification, Purchaser acknowledges it is entering into this Agreement on the basis of Purchaser's own investigation of the physical environmental conditions of the Property, including subsurface conditions, and Purchaser assumed the risk that adverse physical and environmental conditions may not have been revealed by its own investigation.

#### SECTION 5

##### CLOSING

- 5.1 Closing. The closing of the purchase and sale transaction contemplated herein (the "Closing") shall take place at the office of the West Allis City Attorney or at such other place as is mutually acceptable to Purchaser and Seller, on or before November 30, 2004. The Seller shall vacate the property prior to the closing date. The closing date may be extended by mutual agreement of the parties.
- 5.2 Possession. Possession of the Property shall be delivered to Purchaser at the Closing, subject to the Permitted Encumbrances, free of leases and tenancies, and occupancies.
- 5.3 Proration. All utilities, fuel, water and sewer meter charges and all other similar expenses with respect to the Property for the month in which the Closing occurs, and real estate taxes and other assessments with respect to the Property for the tax year in which the Closing occurs, shall be prorated as of 11:59 p.m. on

the day before the date Seller receives the Purchase Price in immediately available funds, with Purchaser receiving the benefits and burdens of ownership on the Closing Date.

- (a) (1) If the Closing shall occur before the tax rate or the assessed valuation of the Property is fixed for the then current year, the apportionment of taxes and assessments shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, with a further reconciliation to be made when the final rate or valuation rate is received. The terms of this paragraph shall survive Closing.
- (2) If any certiorari or other proceedings for the reduction of real estate taxes are pending at the Closing Date with respect to the tax year in which the Closing occurs, Purchaser shall take over the prosecution of such action with counsel of Purchaser's choice; provided, however, that Purchaser will not settle or compromise such action without Seller's prior written consent. Any tax refund resulting from such proceeding, net of Seller's and Purchaser's costs of prosecuting the same, shall be apportioned between Seller and Purchaser in the same proportion that real estate taxes for such tax year are apportioned. Seller shall have the sole right to continue the prosecution of any certiorari or other proceedings for the reduction of real estate taxes which relate wholly to a tax year prior to the one in which the Closing Date occurs, and to settle or compromise the same in Seller's sole discretion, and to retain any refund so received.
- (b) If the Closing shall occur before the actual amount of utilities, fuel, water or sewer meter charges or other similar expenses with respect to the Property for the month in which the Closing occurs are determined (and unless a meter reading or final bill has been obtained prior to Closing,) the apportionment of such utilities, fuel, water or sewer meter charges or other similar expenses shall be upon the basis of an estimate by Seller of such charges. Subsequent to the Closing, when the actual amount of charges with respect to the Property for the month in which the Closing occurs are determined, the parties agree to adjust the Proration of such utilities, water or sewer meter charges or other operating expenses and, if necessary, to refund or repay such sums as shall be necessary to effect such adjustment. The agreements of Seller and Purchaser set forth in this Section 5.3 shall survive the Closing. All pro-rations not finished as of the Closing Date shall to the extent possible be completed and finalized no later than three (3) months following the Closing Date.

5.4 Closing Costs. Purchaser shall pay, on the Closing Date, all recording and filing charges and fees to record the documents evidencing the conveyance of the Property and all costs and charges of the closing and consummation of the purchase and sale transaction contemplated in this Agreement as are customarily charged to and payable by a purchaser in such transactions in the location in which the Property is situated. Seller shall pay, on the Closing Date, the title insurance premium for the Owner's Policy (as defined in Section 5.5(b) below), all survey update charges, the transfer tax imposed on the conveyance of the Land and Improvements and all other customary fees, costs and charges of the closing and consummation of the purchase and sale transaction contemplated in this Agreement as are customarily charged to and payable by a seller in such transactions in the location in which the Property is situate. Notwithstanding the foregoing, each party shall pay its own attorneys' fees and the fees of any accountants and/or advisers incurred in connection with the transaction contemplated in this Agreement as are customarily charged to and payable by a seller in such transactions in the location in which the Property is situate. Purchaser and Seller shall each pay one half of the Closing fee charged by the Title Company. Notwithstanding the foregoing, each party shall pay its own attorney's fees and the fees of any accountants and/or advisers incurred in connection with the transaction contemplated in this Agreement.

5.5 Sellers Obligations at the Closing. At Closing, Seller shall deliver, or cause to be delivered, to Purchaser, the following:

- (a) Evidence of Authority. Such organizational and authorizing documents of Seller as shall be reasonably required by the Title Company to evidence Seller's authority to consummate the transactions contemplated by this Agreement.



- (b) Deed. A duly executed and acknowledged Special Warranty Deed to the Land and Improvements sufficient to enable the Title Company to issue its standard form Owners policy to Purchaser, insuring fee simple title to the Land and Improvements, subject only to the Permitted Encumbrances. Purchaser, at Purchaser's sole expense, may elect to cause the Title Company to provide extended coverage or issue certain endorsements; provided that Seller shall have no obligation to deliver any affidavits or other documentation in connection with such extended coverage or endorsements other than those affidavits or certifications referred to in Section 3.3(a). Notwithstanding the foregoing, Seller shall have no obligation or liability to the Purchaser in the event that the Title Company is unwilling or unable to issue the extended coverage or endorsements and the provisions at Purchaser's request for extended coverage or endorsements shall not be a condition to Closing.
- (c) FIRPTA Affidavit. A duly executed affidavit of Seller certifying that Seller is not a "foreign person," as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and in any applicable state laws for the state in which the Property is located.
- (d) Original Documents. The originals of all Contracts in Seller's possession.
- (e) Transfer Tax Forms. All transfer tax and other similar tax returns which Seller is required by law to execute and acknowledge and to deliver, either individually or together with Purchaser, to any governmental authority as a result of the sale, together with checks made payable to the appropriate governmental authority in the required amounts (unless Seller authorizes the Title Company to deduct and pay such expenses out of monies payable to Seller).
- (f) Records and Files. Copies of records and files which are in Seller's possession relating to the current operation and maintenance of the Property and environmental issues, including, without limitation, current tax bills, current water, sewer, utility and fuel bills, repair and maintenance records and the like which affect or relate to the Property. The parties agree to cooperate so that, to the extent practical, copies of background records which at or prior to the Closing Purchaser requests to have delivered to it will be identified to the satisfaction of the parties without actual delivery at the Closing and will be deemed delivered although in fact retain in the management office or located at the Property. Seller will have the right to retain all original records relating to its period of ownership.

5.6 Purchaser's Obligations at the Closing. At the Closing, Purchaser shall deliver or cause to be delivered to Seller the following:

- (a) Purchase Price. The Purchase Price by wire transfer of immediately available funds.
- (b) Evidence of Authority. Such organizational and authorizing documents of Purchaser as shall be reasonably required by Seller and/or the Title Company authorizing Purchaser's acquisition of the Property pursuant to this Agreement and the execution of this Agreement and any documents to be executed by Purchaser at the Closing.
- (c) Taxpayer Certification. A duly executed Taxpayer I. D. Certification in the form attached to this Agreement as Exhibit F.
- (d) Transfer Tax Forms. Duly executed and acknowledged transfer tax forms described in Section 5.

5.7 Insurance. Seller's existing liability and property insurance pertaining to the Property shall be canceled as of the Closing Date, and Seller shall be entitled to receive any premium refund due thereon.

SECTION 6  
RISK OF LOSS

- 6.1 Condemnation. If, prior to the Closing, the Property or any part thereof is taken by eminent domain proceedings or by deed in lieu thereof, Purchaser may either at or prior to Closing (a) terminate this Agreement, or (b) consummate the Closing, in which latter event all of Seller's assignable right, title and interest in and to the award of the condemning authority shall be assigned to Purchaser at the Closing and there shall be no reduction in the Purchase Price.
- 6.2 Casualty. Except as otherwise provided in this Agreement, Seller assumes all risks for damage to or injury occurring to the Property by fire, storm, accident, or any other casualty or cause until the Closing has been consummated. If before the Closing the Property, or any part thereof, suffers any damage from fire or other casualty which is reasonably estimated by Seller to require in excess of \$100,000 to repair and restore Seller will notify Purchaser of such fact and Purchaser at its sole right may either (a) terminate this Agreement by notice to Seller given within ten (10) days following Seller's notice to Purchaser, or (b) consummate the Closing, in which latter event all of Seller's right, title and interest in and to the proceeds of any insurance covering such damage (less an amount equal to any expenses and costs incurred by Seller to collect or adjust such insurance or to secure the Improvements or initiate repairs or restoration of the Property (collective, "Seller Expenses") all of which shall be payable to Seller, to the extent the amount of such insurance does not exceed the Purchase Price, shall be assigned to Purchaser at the Closing; Purchaser will also be credited with the amount of Seller's deductible under its insurance policy applicable to such casualty. If prior to the Closing, the Property, or any part thereof, suffers any such damage which is reasonably estimated by Seller to require less than \$100,000 to repair or restore Purchaser agrees that it will consummate the Closing and accept the assignment of the proceeds of any insurance covering such damage (less Seller Expenses) plus an amount equal to Seller's deductible under its insurance policy applicable to such casualty and there shall be no reduction in the Purchase Price or obligation of Seller to complete restoration. Seller agrees that from and after the date hereof and until the Closing Seller shall to carry all insurance coverage which it presently carries on the Property.
- 6.3 Uniform Vendor and Purchaser Risk Act. Purchaser and Seller each hereby waives the Uniform Vendor and Purchaser Risk Act (if and to the extent applicable) and agree that the provisions of this Section 7 shall govern the respective rights and obligations of Purchaser and Seller with respect to the subject matter of this Section 7.

SECTION 7  
DEFAULT

- 7.1 Breach by Seller.
- (a) Closing. In the event that Seller shall breach or default in the performance of its obligations to consummate the transaction contemplated by this Agreement for any reason (except Purchaser's breach or default under this Agreement or a termination of this Agreement by Purchaser or Seller pursuant to a right to do so under the provisions hereof), Purchaser, as Purchaser's sole and exclusive remedy, may either: (1) terminate this Agreement, or (2) pursue the remedy of specific performance of Seller's obligations under this Agreement, provided that (i) Purchaser is not in breach or default in the performance of its obligations under this Agreement, and (ii) Purchaser has offered in writing to tender the Purchase Price, less Purchaser's good faith reasonable estimate of Proration credits that would be credited against the Purchase Price, to the Seller in immediately available funds.
- (b) Breach of Representations. In the event that following Closing Purchaser becomes aware of a breach or default by Seller in the performance of any of its representations, warranties or covenants which by

the express terms of this Agreement survive the Closing, Purchaser, as Purchaser's sole and exclusive remedy may pursue Seller for actual damages.

- (c) Damages. Purchaser hereby agrees that prior to its exercise of any right or remedy as a result of any breach or default by Seller, Purchaser will first deliver written notice of said breach or default to Seller and give Seller ten (10) days thereafter in which to cure said breach or default, if Seller so elects.

7.2 Breach by Purchaser.

Purchasers' Damages. In the event that Purchaser fails to comply with its obligations to consummate the transaction contemplated by this Agreement for any reason (except Seller's breach or default), Seller's sole remedy shall be to pursue the remedy of specific performance.

- 7.3 No Personal Liability. Under no circumstances shall any officer or employee of the Purchaser have any personal liability arising out of this Agreement, and Seller or any successor in interest to Seller shall not seek or claim any such personal liability.

- 7.4 No Consequential Damages. Notwithstanding any provision of this Agreement to the contrary, neither party shall be liable to the other for consequential, indirect, incidental or exemplary damages, whether based on contract, negligence, strict liability or otherwise.

## SECTION 8

### RELEASE OF CLAIMS

- 8.1 Release of Claims. If Seller fails to vacate the Property by November 30, 2004, or such other date as the parties may mutually agree to, Seller acknowledges that the Building Inspector for the City of West Allis has held a raze order under Section 66.0413, Wis. Stat., in abeyance pending attempts by the parties to consummate this Agreement. Should the parties fail to close due to an intentional breach by Seller, Seller hereby waives any and all claims against Purchaser, whether founded in state or federal law, with respect to issuance of a raze order. Seller also agrees, contingent upon consummation of the closing hereunder to release Purchaser from any and all claims that Seller may have with regard to a previous Raze Order issued by the West Allis Building Inspector on December 5, 2002, together with all claims raised in Milwaukee County Case No. 03-CV-000218 and U.S. District Court, Eastern District of Wisconsin, Case No. 03-C-0039. The parties agree that this provision shall survive the Closing or termination of this Agreement.

## SECTION 9

### COOPERATION TO OBTAIN GRANTS/LOANS

- 9.1 Purchaser to Assist Seller. The Purchaser shall cooperate with Seller and use its best efforts to assist Seller in attempting to obtain the following grants and loans:
- (a) A \$500,000 loan from one of the following entities: Milwaukee Economic Development Corporation, City of Milwaukee or Northwest Side Community Development Corporation.
  - (b) Customized labor-training grants from the Wisconsin Department of Commerce and/or the Private Industry Council.
  - (c) Milwaukee Renewal Community Initiative tax credits such as the Renewal Community Wage Credits against Federal Income Taxes.

(d) A letter from the Purchaser to a lending institution outlining the intent of the Purchaser to acquire the Property.

9.2 Seller to Assist Purchaser. The Seller will use its best efforts to assist Purchaser in attempting to obtain the following funding:

(a) Provide Purchaser with necessary financial statements to enable Purchaser to assist Seller in obtaining the grants/loans set forth in Section 9.1.

(b) Provide said financial statements to the State of Wisconsin Department of Natural Resources to assist the Purchaser in qualifying for certain state site assessment grants.

9.3 Obtaining Grants/Loans Not a Condition. While the parties shall cooperate in attempting to obtain the grants and/or loans set forth above, the actual receipt of such a grant or loan is not a condition precedent to this Agreement and failure to obtain such a grant or loan shall not constitute grounds for failure to otherwise perform under this Agreement.

## SECTION 10

### MISCELLANEOUS

10.1 Notices. All notices, demands and requests which may be given or which are required to be given by either party to the other, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed given either: (a) on the date personally delivered to the address below, as evidenced by written receipt therefor, whether or not actually received by the person to whom addressed; (b) on the third (3<sup>rd</sup>) business day after being sent, by certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at the address specified below; (c) on the first (1<sup>st</sup>) business day after being deposited into the custody of a nationally recognized overnight delivery service such as Federal Express Corporation, Airborne Express, United Parcel Service, Emery or Purolator, addressed to such party at the address specified below, or (d) upon actual receipt of a fax copy, as evidenced by fax machine delivery confirmation. For purposes of this Section 11.1, the addresses of the parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

If to Purchaser:                    Department of Development of the City of West Allis  
Attn: John F. Stibal, Director  
7525 West Greenfield Avenue  
West Allis, WI 53214  
Telephone: (414)302-8460  
Facsimile: (414)302-8401

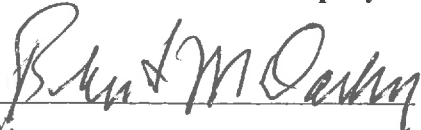
If to Seller:                         Pressed Steel Tank Co., Inc.  
Attn: Robert M. Darling  
1445 South 66<sup>th</sup> Street  
Milwaukee, WI 53214

10.2 Entire Agreement. This Agreement embodies the entire agreement between the parties relative to the subject matter hereof, and there is no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter hereof, which are not expressly set forth herein.

10.3 Amendment. This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby.

- 10.4 Headings. The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.
- 10.5 Time of Essence. Time is of the essence of this Agreement; however, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States, or the State in which the Property is located, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.
- 10.6 Successors and Assigns, Assignment. This Agreement shall bind and inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, personal and legal representatives, successors and permitted assigns. Purchaser may assign this Agreement and all of the Purchaser's rights hereunder without the written consent of Seller (but on at least fifteen (15) day's prior notice to Seller) to a person or an entity controlling, controlled by or under common control with Purchaser ("Permitted Assignee"). Purchaser shall deliver to Seller a true and complete copy of the assignment to the Permitted Assignee no later than seven (7) business days prior to Closing; such assignment to contain a surviving representation and warranty from the assignee that it qualifies as the Permitted Assignee under this Agreement. Purchaser shall not otherwise assign this Agreement or Purchaser's rights under this Agreement without the prior written consent of Seller, which consent may be withheld in its sole and absolute discretion. No assignment of this Agreement or Purchaser's rights hereunder shall relieve Purchaser of its liabilities under this Agreement. This Agreement is solely for the benefit of Seller and Purchaser; there are no third party beneficiaries hereof. Any assignment of this Agreement in violation of the foregoing provisions shall at Seller's option be null and void.
- 10.7 Invalid Provision. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully serviceable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.
- 10.8 Attorneys Fees. In the event it becomes necessary for either party hereto to file suit to enforce this Agreement or any provision contained herein, the party prevailing in such suit shall not be entitled to recover reasonable attorneys' fees incurred in such suit.
- 10.9 Waiver of Jury. PURCHASER AND SELLER DO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, OR UNDER OR IN CONNECTION WITH THIS AGREEMENT.
- 10.10 Multiple Counterparts. This Agreement may be executed in a number of identical counterparts which, constitute collectively one (1) agreement; in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart with each party's signature.
- 10.11 Exhibits. The exhibits attached to this Agreement and referred to herein are hereby incorporated into this Agreement by this reference and made a part hereof for all purposes.
- 10.12 Construction. Seller and Purchaser acknowledge that each party and its counsel have reviewed and revised this Agreement 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 Agreement or any amendments or exhibits hereto.
- 10.13 No Recordation. Seller and Purchaser hereby acknowledge that neither this Agreement nor any memorandum or affidavit thereof need be recorded of public record in the county in which the Property is located or any other county.

**SELLER:**  
**PRESSED STEEL TANK CO., INC.**  
**d/b/a Wisconsin Tank Company**

  
By:

**Date of Execution by Seller:**

6/18/04

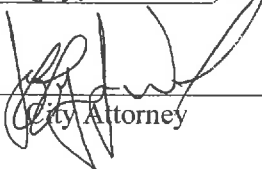
**PURCHASER:**  
**THE COMMUNITY DEVELOPMENT AUTHORITY**  
**OF THE CITY OF WEST ALLIS**

  
By: Department of Development  
John F. Stibal, Director

**Date of Execution by Purchaser:**

6/18/04

Approved as to form this 18<sup>TH</sup> day  
of June, 2004.

  
City Attorney

**EXHIBIT "A"**

**LOAN AGREEMENT**

This Agreement is made and entered into this 18<sup>TH</sup> day of June, 2004, by and between the Community Development Authority of the City of West Allis, Wisconsin ("CDA") and Pressed Steel Tank Co., Inc. ("PST"):

**WITNESSETH:**

**WHEREAS**, the CDA has loaned Two Hundred Fifty Thousand Dollars (\$250,000) to PST pursuant to the terms of a Purchase and Sale Agreement dated 6/18/04 (the "Loan"); and,

**WHEREAS**, this Agreement shall provide for the details of payment of the Loan and matters related thereto.

**NOW, THEREFORE, BE IT RESOLVED** that the parties do hereby mutually agree to the following terms and conditions:

1. PST acknowledges that the CDA has loaned to it the sum of Two Hundred Fifty Thousand Dollars (\$250,000) to pay for outstanding back taxes and sewer and water bills on the Property, as set forth in said Purchase and Sale Agreement.
2. PST will execute and deliver to the CDA, at the time of the making of the Loan, a Promissory Note for repayment of the Loan proceeds in a form attached hereto as Exhibit "1", the terms of which are incorporated herein by reference (the "Note").
3. PST warrants and represents that it has the corporate power and authority to enter into this Agreement, deliver, issue and perform its obligations hereunder and incur the indebtedness evidenced thereby.
4. PST warrants and represents that the making of this Agreement and compliance with the terms hereof by PST has been duly authorized by all necessary corporate action, it is not at variance with or in contravention of any indenture, contract or agreement to which PST is a party or to which it or any of its property is subject, except those agreements in respect to which PST has obtained a written consent, waiver or release, as the case may be, to the transactions contemplated herein.
5. This Agreement and the Note are legal, valid, binding upon and enforceable against PST in accordance with their terms, except as such terms may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditor right generally and except as may be limited by general principles of equity.

6. Except as disclosed by PST to the CDA in writing prior to the date hereof, there is no action, suit, proceeding or investigation before any court, public board or body pending or threatened against PST or any of its property which, if adversely determined, would have a material adverse effect upon the business, properties or financial condition of the PST.

7. PST shall pay to the CDA, upon demand, all reasonable charges and expenses of every kind or description, including, but not limited to, attorney fees and expenses of litigation and any and all expenses incurred by the CDA in seeking relief from the automatic stay or any other bankruptcy proceedings, and other expenses (of the type customarily charged by the CDA) incurred or expended by the CDA in connection with or in any way related to the CDA's relation with PST, with respect to the transactions contemplated by this Agreement or any other Loan Document, whether hereunder or otherwise.

8. PST shall immediately notify the CDA in writing of the occurrence of any failure by it to observe or perform any covenant or agreement contained in this Agreement or any other default hereunder.

9. All statements contained in any certificate, instrument or document delivered by or on behalf of PST pursuant to this Agreement and the transactions contemplated hereby shall be deemed representations and warranties hereunder unless otherwise expressly provided herein. The representation and warranties contained in this Agreement shall survive the closing and continue in full force and effect for the duration of the Loan. No examination or investigation by or on behalf of the CDA shall have the effect of stopping the CDA from asserting breach or failure of any such representation or warranty or constitute or operate as a waiver of any such representation or warranty in whole or in part.

10. In the event of a non-payment of any sum of money at the time or times when the payment shall become due, or the failure to observe or perform any of the covenants and conditions by PST to be kept and performed under the terms of this Agreement, the Purchase and Sale Agreement, or any agreement made an exhibit hereto, then, in such case, the whole amount of principal due on the Note shall, at the option of the CDA, become due and payable without any notice or demand whatever, both notice and demand being hereby expressly waived, and the same, together with all sums of money which may be or have been paid by the CDA in connection therewith, plus interest thereon at the rate set forth in the Note, shall thereupon be collectible in a suit at law, in the same manner as if the whole of said principal sum have been made payable at the time when any such default shall occur; and, PST covenants and agrees that it will pay to the CDA all expenses incurred therein, and in addition to the taxable costs and said suit, a reasonable sum of money as attorney fees, be included with the expenses above mentioned in the judgment or decree. In the event that PST files or is the subject of a petition in bankruptcy or similar proceedings, in which case, all sums due under the Note shall be immediately due and payable.



11. Each of the parties to this Agreement is entitled to all remedies in the event of default or breach provided by law or in equity. Any forbearance by the CDA in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

12. Any notices or other communications required or permitted hereunder shall be in writing and shall be sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, addressed as follows:

If to PST:                      Pressed Steel Tank Co., Inc.  
1445 South 66<sup>th</sup> Street  
Milwaukee, WI 53214  
Attn: Robert M. Darling

If to the CDA:                Community Development Authority  
of the City of West Allis  
7525 West Greenfield Avenue  
West Allis, Wisconsin 53214  
Attn: John F. Stibal

All such notices or other communications, if mailed, shall be deemed given three (3) days after having been posted.

13. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, heirs and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned without the prior written consent of the other parties.

14. This Agreement and the performance of transactions contemplated hereby shall be governed by, construed and enforced under and in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day, month and year first above written.

COMMUNITY DEVELOPMENT AUTHORITY  
OF THE CITY OF WEST ALLIS  
("CDA")

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

*John F. Stibal*  
John F. Stibal,  
Executive Director

PRESSED STEEL TANK CO., INC.  
("PST")

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

*Robert M. Darling*  
ROBERT M. DARLING, President

Attest: \_\_\_\_\_

*John R. Darling*  
\_\_\_\_\_  
John R. Darling, Secretary

## EXHIBIT "1"

West Allis, Wisconsin  
June 18<sup>TH</sup>, 2004

### NOTE

**FOR VALUE RECEIVED**, the undersigned, Pressed Steel Tank Co., Inc. ("PST"), promises to pay to the order of the Community Development Authority of the City of West Allis, a body politic ("CDA"), on or before [a date five (5) years from date of loan] the sum of Two Hundred Fifty Thousand Dollars (\$250,000) pursuant to a Loan Agreement between the CDA and PST of even date herewith and is shown to be outstanding according to the records of the CDA.

Prior to maturity, this Note shall bear interest computed from the date of each disbursement of Loan proceeds at the rate of six and one-half percent (6½ %) per year. Payments shall be made monthly on the first of each month commencing on the 1<sup>st</sup> of August, 2004. Payments shall be amortized over an eight (8) year period with the payments ballooning on [a date five (5) years from date of loan] After maturity, whether by acceleration, the passage of time or otherwise, the outstanding principal balance and accrued interest shall bear interest at the rate of twelve percent (12 %) per year.

Principal and interest shall be payable in one lump sum on [a date five (5) years from the date of loan], on the amount of Loan proceeds disbursed. Interest is computed for the actual number of days principal is unpaid on the basis of a 360-day year.

PST agrees to pay all costs of collection, including reasonable attorney fees. PST, for itself, its successors and assigns, hereby expressly waives presentment for payment, notice of dishonor, presentment, notice of protest, protest in all diligence of collection.

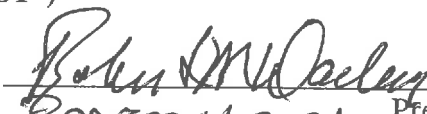
All payments shall be made in lawful currency of the United States of America, to the treasurer of the City of West Allis, 7525 West Greenfield Avenue, West Allis, Wisconsin 53214, or such other place of payment as the holder of this Note may designate in writing.

If principal and interest is not paid when it becomes due, or if default occurs in the Loan Agreement pursuant to which this Note is given, the holder may, at its option, to be exercised at any time thereafter, declare the entire unpaid balance of principal and accrued interest immediately due and payable, without notice or demand, both notice and demand being hereby expressly waived. Thereafter, in lieu of late charges and any other interest provided for in this Note, all unpaid principal and interest shall bear interest at the rate of twelve percent (12%) per annum until paid.

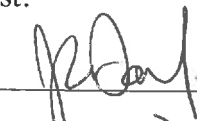
This Note may be prepaid, in full or in part, without penalty.

This Note is executed in and is governed by the laws of the State of Wisconsin. Invalidity of any provision shall not affect the validity of any other provision. Without affecting the liability of PST, the holder may, without notice, renew or extend the time for payment or accept partial payment. Waiver of any default shall not constitute a waiver of any other or subsequent default.

**PRESSED STEEL TANK CO., INC.**  
("PST")

By:   
ROBERT M. DARLING, President

Attest:

, Secretary  
John R. Darlwin

## EXHIBIT "B"

### MORTGAGE

KNOW ALL MEN that PRESSED STEEL TANK CO., INC. ("PST"), herein called the "Mortgagor", hereby mortgages, conveys and warrants to the COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS, a body politic, organized and existing under the laws of Wisconsin, whose address is 7525 West Greenfield Avenue, West Allis, Wisconsin, herein called the "Mortgagee", in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the real estate, together with the buildings and improvements now located or hereafter erected thereon, located in the County of Milwaukee, State of Wisconsin, and more particularly described as follows:

herein called the "Property", together with all the hereditaments, privileges and appurtenances to the same belonging, and all the rents, issues and profits, which may arise or be had therefrom, and the fixtures and other appurtenant interests.

The Property is non-homestead property.

This Mortgage is given to secure payment of indebtedness evidenced by a Promissory Note dated 6/18/04, in the aggregate principal amount of Two Hundred Fifty Thousand and NO/100 Dollars (\$ 250,000.00), and any extensions, renewals or modifications thereof, or substitutes or replacements therefore (hereinafter the "Note"), interest due and payable thereon, payment of such further sums as Mortgagee hereafter may loan to Mortgagor when evidenced by another Note or Notes, reciting such security, and also to secure the performance of all covenants and agreements contained herein.

Mortgagor hereby covenants that it is the owner of the Property.

So long as all or any part of the principal and/or interest on the Note and any additional indebtedness or obligation arising out of the Mortgage, or any instrument of the Mortgagor's collateral hereto, remains outstanding and unpaid, the Mortgagor covenants with Mortgagee that:

1. The Mortgagor shall promptly pay when due the principal and the interest on the indebtedness evidenced by the Note and any other Notes secured by this Mortgage.

2. The interests of the Mortgagor and of the Mortgagee in the Property shall be assessed for taxation and taxed together, without separate valuation, and the Mortgagor shall pay, or cause to be paid, before they become delinquent, all taxes and assessments now or hereafter assessed or levied against the Property, and shall deliver to the Mortgagee or the Mortgagee's representative on demand, receipts showing due payment thereof.

3. The Property shall be insured against loss or damage by fire or other casualty included within the term "extended coverage", and such other hazards as Mortgagee may require and in such reasonable amounts and for such periods as Mortgagee may require, provided that Mortgagee shall not require an amount of coverage which exceeds the lesser of (i) the amount of coverage to pay the sum secured by this Mortgage and all superior liens encumbering the Property, or (ii) the maximum amount permitted by the insurer. All insurance policies and renewals therefore shall be through insurers approved by Mortgagee, such approval shall not be unreasonably withheld, and shall be in a form acceptable to the Mortgagee and shall include a standard mortgage clause in favor of and in a form acceptable to the Mortgagee. The Mortgagee shall have the right to hold the policies and renewals thereof, and the Mortgagor shall promptly furnish to the Mortgagee all renewal notices and all receipts of said premiums. In the event of loss, the Mortgagor shall give prompt notice to the insurance carrier and Mortgagee. Mortgagee shall make proof of loss if not promptly made by Mortgagor.

4. If the Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects the Mortgagee's interest in the property, including, but not limited to, eminent domain, insolvency, code enforcement, arrangements or proceedings involving a decedent, or the filing of a petition or entry of an order for relief under the federal bankruptcy code, or the appointment of a custodian, trustee or receiver, then the Mortgagee, at the Mortgagee's option, upon notice to the Mortgagor, may make such appearances, disburse such sums and take such action as is necessary to protect the Mortgagee's interest, including, but not limited to, disbursement of reasonable attorneys' fees, and entry upon the Property to make repairs. Mortgagee shall pay cost of any damage to the Property caused by such entry. Any amounts disbursed by the Mortgagee pursuant to this paragraph, with interest thereon, shall become additional indebtedness of the Mortgagor secured by this Mortgage. Unless the Mortgagor and the Mortgagee agree to other terms of payment, such amounts shall be payable upon notice from the Mortgagee to the Mortgagor requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on the outstanding principal under the Note, unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph shall require the Mortgagee to incur any expense or take any action hereunder.

4.5 The Mortgage is subordinate to prior liens on the Property as set forth in the Title Commitment report attached hereto as Exhibit 1, but only to the present outstanding balance of such mortgage. A default on the first mortgage, subject to such notice and right to cure as may be applicable thereto, is an event of default under this mortgage. Mortgagor shall immediately provide written notice of default received from the first Mortgagee. Mortgagee reserves the right to satisfy a default under the first mortgage and add the payment or cost incurred to the balance due on this mortgage.

**MORTGAGOR AND MORTGAGEE FURTHER COVENANT AND AGREE THAT:**

1. In the event of a non-payment of any sum of money at the time or times when the payment shall become due or the failure to perform any of the covenants or conditions by Mortgagor to be kept and performed, then, in such case, or in either case, the whole amount of principal due on the Note, shall at the option of the Mortgagee, become and be immediately due and payable without any notice to said Mortgagor (notice being hereby waived), and the same, together with all sums of money which may be or have been paid by Mortgagee for or on account of insurance, taxes, assessments and/or other disbursements made by Mortgagee, pursuant to the terms of the Mortgage plus interest thereon at the rate aforesaid, and shall thereupon be collectible in a suit of law, or by foreclosure of this Mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such default shall occur; and the judgment or decree in the suit brought to foreclose the same shall embrace, with said principal debt and interest, all the sums so paid, with interest at the rate aforesaid; and, it shall be lawful in such case, or in either case, for Mortgagee to grant, sell and convey the Property with the appurtenances thereto belonging, at public sale, and on such sale to make and execute to the purchaser or purchasers, good and sufficient deeds of conveyance in the law, pursuant to the statute in such case made and provided; and, in case suit shall be brought for the foreclosure of this Mortgage, Mortgagor covenants and agrees that he will pay to Mortgagee all expenses incurred therein, and in addition to the taxable costs in such suit, a reasonable sum of money as attorneys fees to be included with the expenses above mentioned, in the judgment or decree.

2. Any extension of time for payment or modification of amortization of the sums secured by this Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release, in any manner, the liability of the original Mortgagor and Mortgagor's successors in interest. Mortgagee shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Mortgagor and Mortgagor's successors in interest.

3. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Mortgage.

4. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

5. Mortgagor agrees to the provisions of Section 846.101 and 846.103(2) of the Wisconsin Statutes, as may apply to the Property and as may be amended, permitting Mortgagee in the event of foreclosure to waive the right to judgment for deficiency and to hold the foreclosure sale within the time provided in such applicable Section.

6. Mortgagor shall not transfer, sell or convey any legal or equitable interest in the Property (by deed, land contract, option, long-term lease or in any other way) without the prior written consent of Mortgagee, unless the indebtedness secured by this Mortgage is first paid in full. The entire indebtedness under the Note shall become due and payable in full, at the option of Mortgagee without notice, upon any transfer, sale or conveyance made in violation of this paragraph.

7. Mortgagor covenants not commit waste nor suffer waste to be committed on the Property, to keep the Property in good condition and repair, to keep the Property free from all liens and encumbrances except as otherwise provided herein, and to comply with all laws, ordinances and regulations affecting the Property. Mortgagor shall pay when due all indebtedness which may be or becomes secured at any time by a Mortgage or other lien on the Property superior to this Mortgage and any failure to do so shall constitute a default under this Mortgage.

8. Upon default or during the pendency of any action to foreclose this Mortgage, Mortgagor consents to the appointment of a receiver of the Property, to collect the rents, issues and profits of the Property, during the pendency of such an action, and such rents, issues and profits when so collected, shall be held and applied as the court shall direct.

9. Mortgagor hereby transfers and assigns absolutely to Mortgagee as additional security, all rents, issues and profits which become or remain due (under any form of agreement for use or occupancy of the Property or any portion thereof), or which were previously collected and remain subject to Mortgagor's control, following any default under this Mortgage or the Note secured hereby and delivery of notice of exercise of this assignment by Mortgagee to tenant or other user(s) of the Property. This assignment shall be enforceable with or without appointment of a receiver and regardless of Mortgagee's lack of possession of the Property.

10. The covenants and agreements herein contained shall bind and the rights hereunder shall inure to the respective successors and assigns of Mortgagee and Mortgagor. All covenants and agreements of Mortgagor shall be joint and several.

IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage this 18 day of June, 2004.

PRESSED STEEL TANK CO., INC.  
("PST")

By: Robert M Darling  
ROBERT M DARLING President

Attest:  
John R. Darling, Secretary

State of Wisconsin )  
                                      ) ss  
Milwaukee County )

Personally came before me this 18<sup>th</sup> day of June, 2004, the above-named ROBERT M. DARLING and JOHN R. DARLING, the President and Secretary of Pressed Steel Tank Co., Inc., who executed the foregoing instrument and acknowledged the same.

Witness my hand and official seal.

[Signature]  
Notary Public, State of Wisconsin  
My Commission Expires: 15 August

This instrument was drafted by and upon recording should be returned to:

Scott E. Post, City Attorney  
City of West Allis  
7525 West Greenfield Avenue  
West Allis, WI 53214  
(414-302-8450)



*Have updated, Change T1, revised 5, 6 & 7.  
added 8, 9, + 10. to B-1, Update 8. of B-2  
and added 16. to B-2*

LAWYERS TITLE INSURANCE CORPORATION  
21075 Swenson Dr., Suite 900  
Waukesha, WI 53186  
Phone: (262) 798-2640  
Fax: (262) 798-2647

November 21, 2002

### COMMITMENT DISTRIBUTION LETTER

RE: Our Case Number: 203580  
Address of Premises: 1445 S. 66th St.  
West Allis, WI.  
slesak@ci.west-allis.wi.us

Copies of the attached commitment for title insurance have been sent to the following as requested:

LENDER

LISTING BROKER  
City of West Allis  
Attn: Jeff Warchol  
7525 W. Greenfield Ave.  
West Allis, WI 53214  
P: 414-302-8450 F: 414-302-8444

SELLING BROKER

SELLERS ATTORNEY

BUYERS ATTORNEY

SELLER

BUYER

OTHER

If you have any questions regarding the attached commitment for title insurance, please contact . We look forward to providing closing services for this transaction. If you would like to schedule a closing time, please phone the number designated above and ask for the Closing Department. Thank you for selecting Lawyers Title to assist you. We look forward to serving you again in the near future.

**LTIC**

**Lawyers Title Insurance Corporation**

P.O. Box 117  
Waukesha, WI 53187-0117  
Phone: (262) 798-2640

June 17, 2004

City of West Allis  
Attn: Jeff Warchol  
7525 W. Greenfield Ave.  
West Allis, WI 53214  
P: 414-302-8450 F: 414-302-8444

Case No. 20358011 rk  
Lot: 5 Block: 1  
Buyer: Community Development  
Buyer: Authority of the City of

Address: 1445 S. 66th St.  
Subdivision: Maynard/Agnew  
Seller: Fluid Technology, Inc  
Seller:  
slesak@ci.west-allis.wi.us

\*\*\*\*\* I N V O I C E \*\*\*\*\*

Owners Premium: 475.00  
Liability Amount: 500,000.00

Mortgage Policy Premium:  
Liability Amount:

Mortgage Policy Premium:  
Liability Amount:

Amended Report:  
Endorsements:

Letter Report:  
Escrow Fees:

Closing Fee (Buyer):  
Closing Fee (Seller/Owner):  
Construction Draw Fees:  
Exchange Fees:  
Inspections:

Recording Fees:  
Transfer Fee:  
Special Assessment Search Fee:

remainder of premium

kl

Total: 475.00

LAWYERS TITLE INSURANCE CORPORATION  
21075 Swenson Dr., Suite 900  
Waukesha, WI 53186  
P.O. Box 117  
Waukesha, WI 53187-0117  
PHONE: (262) 798-2640  
FAX: (262) 798-2647

REVISED  
COMMITMENT FOR TITLE INSURANCE  
SCHEDULE A

slesak@ci.west-allis.wi.us

Revision No. 2-kl (06/17/04)  
CASE NO. 203580

1. EFFECTIVE DATE: May 17, 2004 at 5:59 a.m.

2. POLICY OR POLICIES TO BE ISSUED:

(a) AMOUNT \$ 500,000.00

x ALTA OWNER'S POLICY (10-17-92)  
ALTA RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)  
PROPOSED INSURED:

Community Development Authority of the City of West Allis

(b) AMOUNT \$

ALTA LOAN POLICY (10-17-92)  
PROPOSED INSURED:

None

(c) AMOUNT \$

PROPOSED INSURED:

None

3. TITLE TO THE FEE SIMPLE ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED TO IN THIS COMMITMENT IS AT THE EFFECTIVE DATE HEREOF VESTED IN :

Pressed Steel Tank Co., Inc. f/k/a Fluid Technology, Inc., a Delaware corporation, f/d/b/a Wisconsin Tank Company

4. THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:

See attached exhibit (Schedule A, Legal Description)

COUNTERSIGNED AT MADISON, WISCONSIN ts /ts



Authorized Officer or Agent  
Form No. 91-88 (SCH. A)  
035-1-088-0001/4

Schedule A, -Page 1

THIS COMMITMENT IS INVALID UNLESS  
THE INSURING PROVISIONS AND  
SCHEDULES A AND B ARE ATTACHED.

LAWYERS TITLE INSURANCE CORPORATION

CASE NO. 203580

SCHEDULE A  
LEGAL DESCRIPTION CONTINUED

ALL OF BLOCK 3, IN C. A. MAYNARD AND AGNEW'S SUBDIVISION NO. 3, BEING A PART OF THE NORTHEAST 1/4 OF SECTION 3, IN TOWNSHIP 6 NORTH, RANGE 21 EAST, IN THE CITY OF WEST ALLIS, MILWAUKEE COUNTY, WISCONSIN.

AND

LOT 5, IN BLOCK 1, IN ASSESSOR'S PLAT NO. 269, BEING A PART OF THE NORTHWEST 1/4 NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 3, IN TOWNSHIP 6 NORTH, RANGE 21 EAST, IN THE CITY OF WEST ALLIS, COUNTY OF MILWAUKEE, STATE OF WISCONSIN.

## LAWYERS TITLE INSURANCE CORPORATION

## SCHEDULE B--SECTION 1

CASE NO. 203580

## REQUIREMENTS

THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and fully filed for record to-wit:

1. Payment and release of the premises to be insured from the lien of a mortgage from Fluid Technology Inc, a Delaware Corporation, d/b/a Wisconsin Tank Company to AMCA International Corporation to secure \$5,601,700.00 dated January 26, 1987 and recorded January 28, 1987 in the Office of the Register of Deeds for Milwaukee County, Wisconsin in Reel/Volume 2035, Image/Page 203, as Document Number 6014724 which was assigned to AMCA International Finance Corporation. Said Mortgage was subordinated to mortgage to the City of West Allis by Agreement, Document No. 6410594 for Mortgage Document No. 6410592.

NOTE: Said mortgage covers the above described premises and additional lands.

2. Payment and release of the premises to be insured from the lien of a mortgage from Pressed Steel Tank, Co., Inc. to City of West Allis to secure \$250,000.00 dated December 30, 1987 and recorded January 7, 1988 in the Office of the Register of Deeds for Milwaukee County, Wisconsin in Reel/Volume 2175, Image/Page 1475, as Document Number 6137401.

NOTE: Said mortgage covers the above described premises and additional lands.

3. Payment and release of the premises to be insured from the lien of a mortgage from Pressed Steel Tank Company, Inc. to City of West Allis to secure \$150,000.00 dated August 22, 1990 and recorded August 23, 1990 in the Office of the Register of Deeds for Milwaukee County, Wisconsin in Reel/Volume 2483, Image/Page 349, as Document Number 6410592.

NOTE: Said mortgage covers the above described premises and additional lands.

4. Partial Release of UCC Financing Statement showing Pressed Steel Tank Co., Inc. as debtor and LaSalle Bank National Association, 135 S. LaSalle Street, Chicago IL 60603 as secured party filed March 21, 2000 in the Office of the Register of Deeds for Milwaukee County, Wisconsin as Document Number 3614770.

(Continued)

THIS COMMITMENT IS INVALID UNLESS  
THE INSURING PROVISIONS AND  
SCHEDULES A AND B ARE ATTACHED.

SCHEDULE B-SECTION 1-PAGE 1  
Form No. 91-88 (B-1)  
035-1-088-0001/4

SCHEDULE B - SECTION I  
REQUIREMENTS CONTINUED

CASE NO. 203580

1

5. Warranty Deed from Pressed Steel Tank Co., Inc. f/k/a Fluid Technology Inc, a Delaware Corporation, f/d/b/a Wisconsin Tank Company, pursuant to proper corporate authority, conveying fee simple title to Community Development Authority of The City of West Allis.
6. Certified copy of proper corporate resolution by Pressed Steel Tank Co., Inc. f/k/a Fluid Technology Inc, a Delaware Corporation, f/d/b/a Wisconsin Tank Company approving the sale and authorizing those persons executing the conveyance required at Item No. 7 above to act on behalf of and bind said corporation.
7. Intentionally deleted.
8. Payment in full of delinquent real estate taxes for the year(s) 2002 and 2003 in the amount(s) of \$148,204.35 and \$33,874.61, plus penalty and interest.
9. Release of Construction Lien claim filed in the office of the Clerk of Circuit Court for Milwaukee County on February 28, 2003, as No. 2003CL000149, by Chicago Flameproof & Wood Specialities, against Fluid Technology, Inc., affecting the premises described herein in the sum of \$2,645.00.
10. Release of Construction Lien claim filed in the office of the Clerk of Circuit Court for Milwaukee County on September 19, 2003, as No. 2003CL000442, by Quality Concrete Products, Inc., against Fluid Technology, Inc., affecting the premises described herein in the sum of \$1,222.50.

LAWYERS TITLE INSURANCE CORPORATION

CASE NO. 203580

SCHEDULE B--SECTION 2

EXCEPTIONS

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company.

- 1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.

NOTE: Exception 1 will be removed only if no intervening matters appear of record between the effective date of this commitment and the recording of the instruments called for at Item (b) of Schedule B-1; or if gap coverage is issued in conjunction with this commitment and the requirements for the issuance of the coverage are met, including the payment of the premium.

- 2. Liens or deferred charges not shown on the tax roll for installations and connections of water and sewer laterals, mains and service pipes.

NOTE: Exception 2 will be removed only if the Company receives written evidence from the municipality that there are no such liens or deferred charges against the land, or that all such items have been paid in full.

- 3. Rights or claims of parties in possession not shown by the public records.

NOTE: Exception 3 will be removed only if the Company receives a completed Owner's Affidavit on the form furnished by the Company. If the Affidavit shows that there are tenants, Exception 3 will be replaced by an exception for the rights of the tenants disclosed by the Affidavit.

- 4. Such state of facts as would be disclosed by an accurate survey and inspection of the premises.

- 5. Easements or claims of easements not shown by the public records.

(Continued)

NOTE: IF POLICY IS TO BE ISSUED IN SUPPORT OF A MORTGAGE LOAN, ATTENTION IS DIRECTED TO THE FACT THAT THE COMPANY CAN ASSUME NO LIABILITY UNDER ITS POLICY, THE CLOSING INSTRUCTIONS, OR INSURED CLOSING SERVICE FOR COMPLIANCE WITH THE REQUIREMENTS OF ANY CONSUMER CREDIT PROTECTION OR TRUTH IN LENDING LAW IN CONNECTION WITH SAID MORTGAGE LOAN.

THIS COMMITMENT IS INVALID UNLESS THE INSURING PROVISIONS AND SCHEDULES A AND B ARE ATTACHED

SCHEDULE B-SECTION 2-PAGE 1  
Form No. 91-88 (B-2) WI  
035-1-088-4804/1

SCHEDULE B  
EXCEPTIONS CONTINUED

CASE NO. 203580

NOTE: Exceptions 4 and 5 will be removed only if the Company receives an original survey which (1) has a current date, (2) is satisfactory to the Company, and (3) complies with current ALTA/ACSM Minimum Survey Standards or Wisconsin Administrative Code AE-7. If the survey shows matters which affect the title to the property, Exceptions 4 and 5 will be replaced by exceptions describing those matters.

6. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished imposed by law and not shown by the public records.

NOTE: Exception 6 will be removed only if the Company receives a completed Owner's Affidavit on the form furnished by the Company and the following is true:

No work done: The Affidavit must establish that there has been no lienable construction work in the previous six months.

Repair work done: If repair work has been done on an existing structure in the last six months, the Affidavit must accurately disclose all parties who have done lienable work in the last six months, and have attached to it original full waivers of lien from each person or company.

New construction: If the property contains a newly-built structure, the Affidavit must incorporate a complete list of all parties who have done lienable work in the last six months, and have attached to it original full waivers of lien from each person or company. If Exception 6 is removed, it will be replaced by the following exception: "Any construction lien claim by a party not shown on the Owner's Affidavit supplied to the Company." (This exception applies only to the Owner's Policy.)

7. Liens, hook-up charges or fees, deferred charges, reserve capacity assessments, impact fees, or other charges or fees due and payable on the development or improvement of the land, whether assessed or charged before or after the Date of Policy.

(Continued)



SCHEDULE B  
EXCEPTIONS CONTINUED

CASE NO. 203580

NOTE: Exception 7 will be removed only if the Company receives (1) written evidence from the municipality that there are no deferred charges, hookup fees, or other fees or charges attaching to the property; (2) evidence that the land contains a completed building; and (3) a statement showing that the land has a water and sewer use account. If the land is vacant, this exception will not be removed.

8. Taxes for the year 2004 and subsequent years. Parcel No. 454-0231-000.
9. Special taxes or assessments, if any.
10. Title to any equipment, fixtures, appliances, tanks, machinery or installations, except such as is finally determined to be part of the insured premises, determination of which shall not be part of the obligation of the company.
11. Rights or claims, if any, of tenant(s) in possession under unrecorded lease(s).
12. Restrictions, options, conditions and requirements as set forth in Redevelopment Plan adopted by the Redevelopment Authority of the City of Milwaukee designated "Redevelopment Plan for the Six Points/Farmers Market Redevelopment Project", recorded on February 22, 2001 as Document No. 8027619; Amendment recorded November 26, 2001 as Document No. 8175523; Second Amendment recorded December 17, 2001 as Document No. 8185313.
13. Notice of Pendency of Resolution for the Vacation and Discontinuance of S. 66th Street recorded February 6, 2001 as No. 7236 and re-recorded February 20, 2001 as No. 7237.
14. Notice of Pendency of Resolution for the Vacation and Discontinuance of S. 66th Street recorded March 6, 2001 as No. 7238.
15. Resolutions as to vacating streets and alleys recorded December 21, 2001 as Document No. 8188820 and on July 21, 2002 as Document No. 8312180.

(Continued)

SCHEDULE B  
EXCEPTIONS CONTINUED

CASE NO. 203580

16. Terms and conditions contained in an Order to Raze Building recorded December 12, 2002 in the Office of the Register of Deeds for Milwaukee County, Wisconsin in Reel 5475, Image 4009, as Document Number 8407453.

The property address as indicated per tax roll is: 1445 S. 66th St., West Allis, WI.

EXHIBIT "C"

LOAN AGREEMENT

This Agreement is made and entered into this 18<sup>th</sup> day of June, 2004, by and between the Community Development Authority of the City of West Allis, Wisconsin ("CDA") and Pressed Steel Tank Co., Inc. ("PST"):

WITNESSETH:

WHEREAS, the CDA has loaned Five Hundred Thousand Dollars (\$500,000) to PST pursuant to the terms of a Purchase and Sale Agreement dated 6/18/04 (the "Loan"); and,

WHEREAS, this Agreement shall provide for the details of payment of the Loan and matters related thereto.

NOW, THEREFORE, BE IT RESOLVED that the parties do hereby mutually agree to the following terms and conditions:

1. PST acknowledges that the CDA has loaned to it the sum of Five Hundred Thousand Dollars (\$500,000) to pay for relocation expenses, as set forth in said Purchase and Sale Agreement.
2. PST will execute and deliver to the CDA, at the time of the making of the Loan, a Promissory Note for repayment of the Loan proceeds in a form attached hereto as Exhibit "1", the terms of which are incorporated herein by reference (the "Note").
3. PST warrants and represents that it has the corporate power and authority to enter into this Agreement, deliver, issue and perform its obligations hereunder and incur the indebtedness evidenced thereby.
4. PST warrants and represents that the making of this Agreement and compliance with the terms hereof by PST has been duly authorized by all necessary corporate action, it is not at variance with or in contravention of any indenture, contract or agreement to which PST is a party or to which it or any of its property is subject, except those agreements in respect to which PST has obtained a written consent, waiver or release, as the case may be, to the transactions contemplated herein.
5. This Agreement and the Note are legal, valid, binding upon and enforceable against PST in accordance with their terms, except as such terms may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditor right generally and except as may be limited by general principles of equity.

6. Except as disclosed by PST to the CDA in writing prior to the date hereof, there is no action, suit, proceeding or investigation before any court, public board or body pending or threatened against PST or any of its property which, if adversely determined, would have a material adverse effect upon the business, properties or financial condition of the PST.

7. PST shall pay to the CDA, upon demand, all reasonable charges and expenses of every kind or description, including, but not limited to, attorney fees and expenses of litigation and any and all expenses incurred by the CDA in seeking relief from the automatic stay or any other bankruptcy proceedings, and other expenses (of the type customarily charged by the CDA) incurred or expended by the CDA in connection with or in any way related to the CDA's relation with PST, with respect to the transactions contemplated by this Agreement or any other Loan Document, whether hereunder or otherwise.

8. PST shall immediately notify the CDA in writing of the occurrence of any failure by it to observe or perform any covenant or agreement contained in this Agreement or any other default hereunder.

9. All statements contained in any certificate, instrument or document delivered by or on behalf of PST pursuant to this Agreement and the transactions contemplated hereby shall be deemed representations and warranties hereunder unless otherwise expressly provided herein. The representation and warranties contained in this Agreement shall survive the closing and continue in full force and effect for the duration of the Loan. No examination or investigation by or on behalf of the CDA shall have the effect of stopping the CDA from asserting breach or failure of any such representation or warranty or constitute or operate as a waiver of any such representation or warranty in whole or in part.

10. In the event of a non-payment of any sum of money at the time or times when the payment shall become due, or the failure to observe or perform any of the covenants and conditions by PST to be kept and performed under the terms of this Agreement, the Purchase and Sale Agreement, or any agreement made an exhibit hereto, then, in such case, the whole amount of principal due on the Note shall, at the option of the CDA, become due and payable without any notice or demand whatever, both notice and demand being hereby expressly waived, and the same, together with all sums of money which may be or have been paid by the CDA in connection therewith, plus interest thereon at the rate set forth in the Note, shall thereupon be collectible in a suit at law, in the same manner as if the whole of said principal sum have been made payable at the time when any such default shall occur; and, PST covenants and agrees that it will pay to the CDA all expenses incurred therein, and in addition to the taxable costs and said suit, a reasonable sum of money as attorney fees, be included with the expenses above mentioned in the judgment or decree. In the event that PST files or is the subject of a petition in bankruptcy or similar proceedings, in which case, all sums due under the Note shall be immediately due and payable.

11. Each of the parties to this Agreement is entitled to all remedies in the event of default or breach provided by law or in equity. Any forbearance by the CDA in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

12. Any notices or other communications required or permitted hereunder shall be in writing and shall be sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, addressed as follows:

If to PST:                      Pressed Steel Tank Co., Inc.  
1445 South 66<sup>th</sup> Street  
Milwaukee, WI 53214  
Attn: Robert M. Darling

If to the CDA:                Community Development Authority  
of the City of West Allis  
7525 West Greenfield Avenue  
West Allis, Wisconsin 53214  
Attn: John F. Stibal

All such notices or other communications, if mailed, shall be deemed given three (3) days after having been posted.

13. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, heirs and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned without the prior written consent of the other parties.

14. This Agreement and the performance of transactions contemplated hereby shall be governed by, construed and enforced under and in accordance with the laws of the State of Wisconsin.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day, month and year first above written.

**COMMUNITY DEVELOPMENT AUTHORITY  
OF THE CITY OF WEST ALLIS  
("CDA")**

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

*John F. Stibal*  
John F. Stibal,  
Executive Director

**PRESSED STEEL TANK CO., INC.  
("PST")**

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

*Robert M. Darling*  
ROBERT M. DARLING, President

Attest: \_\_\_\_\_

*John R. Darling*  
John R. Darling, Secretary

EXHIBIT "1"

West Allis, Wisconsin  
June /8<sup>th</sup>, 2004

NOTE

**FOR VALUE RECEIVED**, the undersigned, Pressed Steel Tank Co., Inc. ("PST"), promises to pay to the order of the Community Development Authority of the City of West Allis, a body politic ("CDA"), on or before November 30, 2004, the sum of Five Hundred Thousand Dollars (\$500,000) pursuant to a Loan Agreement between the CDA and PST of even date herewith and is shown to be outstanding according to the records of the CDA.

Prior to maturity, this Note shall bear interest computed from the date of each disbursement of Loan proceeds at the rate of zero percent (0 %) per year. After maturity, whether by acceleration, the passage of time or otherwise, the outstanding principal balance and accrued interest shall bear interest at the rate of twelve percent (12 %) per year.

Principal and interest shall be payable in one lump sum on November 30, 2004, on the amount of Loan proceeds disbursed if the closing contemplated in the Purchase and Sale Agreement is not completed. If the closing is completed, then the terms of the Purchase and Sale Agreement govern. Interest is computed for the actual number of days principal is unpaid on the basis of a 360-day year.

PST agrees to pay all costs of collection, including reasonable attorney fees. PST, for itself, its successors and assigns, hereby expressly waives presentment for payment, notice of dishonor, presentment, notice of protest, protest in all diligence of collection.

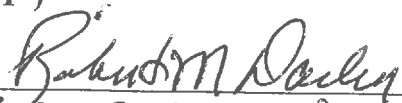
All payments shall be made in lawful currency of the United States of America, to the treasurer of the City of West Allis, 7525 West Greenfield Avenue, West Allis, Wisconsin 53214, or such other place of payment as the holder of this Note may designate in writing.

If principal and interest is not paid when it becomes due, or if default occurs in the Loan Agreement pursuant to which this Note is given, the holder may, at its option, to be exercised at any time thereafter, declare the entire unpaid balance of principal and accrued interest immediately due and payable, without notice or demand, both notice and demand being hereby expressly waived. Thereafter, in lieu of late charges and any other interest provided for in this Note, all unpaid principal and interest shall bear interest at the rate of twelve percent (12%) per annum until paid.


This Note may be prepaid, in full or in part, without penalty.

This Note is executed in and is governed by the laws of the State of Wisconsin. Invalidity of any provision shall not affect the validity of any other provision. Without affecting the liability of PST, the holder may, without notice, renew or extend the time for payment or accept partial payment. Waiver of any default shall not constitute a waiver of any other or subsequent default.

**PRESSED STEEL TANK CO., INC.**  
("PST")

By:   
ROBERT M. DARLING, President

Attest:

  
John R. Darling, Secretary

**EXHIBIT "D"**

**MORTGAGE**

KNOW ALL MEN that PRESSED STEEL TANK CO., INC. ("PST"), herein called the "Mortgagor", hereby mortgages, conveys and warrants to the COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS, a body politic, organized and existing under the laws of Wisconsin, whose address is 7525 West Greenfield Avenue, West Allis, Wisconsin, herein called the "Mortgagee", in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the real estate, together with the buildings and improvements now located or hereafter erected thereon, located in the County of Milwaukee, State of Wisconsin, and more particularly described as follows:

herein called the "Property", together with all the hereditaments, privileges and appurtenances to the same belonging, and all the rents, issues and profits, which may arise or be had therefrom, and the fixtures and other appurtenant interests.

The Property is non-homestead property.

This Mortgage is given to secure payment of indebtedness evidenced by a Promissory Note dated 6/18/04, in the aggregate principal amount of Five Hundred Thousand and NO/100 Dollars (\$ 500,000.00), and any extensions, renewals or modifications thereof, or substitutes or replacements therefore (hereinafter the "Note"), interest due and payable thereon, payment of such further sums as Mortgagee hereafter may loan to Mortgagor when evidenced by another Note or Notes, reciting such security, and also to secure the performance of all covenants and agreements contained herein.

Mortgagor hereby covenants that it is the owner of the Property.

So long as all or any part of the principal and/or interest on the Note and any additional indebtedness or obligation arising out of the Mortgage, or any instrument of the Mortgagor's collateral hereto, remains outstanding and unpaid, the Mortgagor covenants with Mortgagee that:

1. The Mortgagor shall promptly pay when due the principal and the interest on the indebtedness evidenced by the Note and any other Notes secured by this Mortgage.



2. The interests of the Mortgagor and of the Mortgagee in the Property shall be assessed for taxation and taxed together, without separate valuation, and the Mortgagor shall pay, or cause to be paid, before they become delinquent, all taxes and assessments now or hereafter assessed or levied against the Property, and shall deliver to the Mortgagee or the Mortgagee's representative on demand, receipts showing due payment thereof.

3. The Property shall be insured against loss or damage by fire or other casualty included within the term "extended coverage", and such other hazards as Mortgagee may require and in such reasonable amounts and for such periods as Mortgagee may require, provided that Mortgagee shall not require an amount of coverage which exceeds the lesser of (i) the amount of coverage to pay the sum secured by this Mortgage and all superior liens encumbering the Property, or (ii) the maximum amount permitted by the insurer. All insurance policies and renewals therefore shall be through insurers approved by Mortgagee, such approval shall not be unreasonably withheld, and shall be in a form acceptable to the Mortgagee and shall include a standard mortgage clause in favor of and in a form acceptable to the Mortgagee. The Mortgagee shall have the right to hold the policies and renewals thereof, and the Mortgagor shall promptly furnish to the Mortgagee all renewal notices and all receipts of said premiums. In the event of loss, the Mortgagor shall give prompt notice to the insurance carrier and Mortgagee. Mortgagee shall make proof of loss if not promptly made by Mortgagor.

4. If the Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects the Mortgagee's interest in the property, including, but not limited to, eminent domain, insolvency, code enforcement, arrangements or proceedings involving a decedent, or the filing of a petition or entry of an order for relief under the federal bankruptcy code, or the appointment of a custodian, trustee or receiver, then the Mortgagee, at the Mortgagee's option, upon notice to the Mortgagor, may make such appearances, disburse such sums and take such action as is necessary to protect the Mortgagee's interest, including, but not limited to, disbursement of reasonable attorneys' fees, and entry upon the Property to make repairs. Mortgagee shall pay cost of any damage to the Property caused by such entry. Any amounts disbursed by the Mortgagee pursuant to this paragraph, with interest thereon, shall become additional indebtedness of the Mortgagor secured by this Mortgage. Unless the Mortgagor and the Mortgagee agree to other terms of payment, such amounts shall be payable upon notice from the Mortgagee to the Mortgagor requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on the outstanding principal under the Note, unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph shall require the Mortgagee to incur any expense or take any action hereunder.

4.5 The Mortgage is subordinate to prior liens on the Property as set forth in the Title Commitment report attached hereto as Exhibit 1, but only to the present outstanding balance of such mortgage. A default on the first mortgage, subject to such notice and right to cure as may be applicable thereto, is an event of default under this mortgage. Mortgagor shall immediately provide written notice of default received from the first Mortgagee. Mortgagee reserves the right to satisfy a default under the first mortgage and add the payment or cost incurred to the balance due on this mortgage.

**MORTGAGOR AND MORTGAGEE FURTHER COVENANT AND AGREE THAT:**

1. In the event of a non-payment of any sum of money at the time or times when the payment shall become due or the failure to perform any of the covenants or conditions by Mortgagor to be kept and performed, then, in such case, or in either case, the whole amount of principal due on the Note, shall at the option of the Mortgagee, become and be immediately due and payable without any notice to said Mortgagor (notice being hereby waived), and the same, together with all sums of money which may be or have been paid by Mortgagee for or on account of insurance, taxes, assessments and/or other disbursements made by Mortgagee, pursuant to the terms of the Mortgage plus interest thereon at the rate aforesaid, and shall thereupon be collectible in a suit of law, or by foreclosure of this Mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such default shall occur; and the judgment or decree in the suit brought to foreclose the same shall embrace, with said principal debt and interest, all the sums so paid, with interest at the rate aforesaid; and, it shall be lawful in such case, or in either case, for Mortgagee to grant, sell and convey the Property with the appurtenances thereto belonging, at public sale, and on such sale to make and execute to the purchaser or purchasers, good and sufficient deeds of conveyance in the law, pursuant to the statute in such case made and provided; and, in case suit shall be brought for the foreclosure of this Mortgage, Mortgagor covenants and agrees that he will pay to Mortgagee all expenses incurred therein, and in addition to the taxable costs in such suit, a reasonable sum of money as attorneys fees to be included with the expenses above mentioned, in the judgment or decree.

2. Any extension of time for payment or modification of amortization of the sums secured by this Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release, in any manner, the liability of the original Mortgagor and Mortgagor's successors in interest. Mortgagee shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Mortgagor and Mortgagor's successors in interest.

3. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Mortgage.

4. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

5. Mortgagor agrees to the provisions of Section 846.101 and 846.103(2) of the Wisconsin Statutes, as may apply to the Property and as may be amended, permitting Mortgagee in the event of foreclosure to waive the right to judgment for deficiency and to hold the foreclosure sale within the time provided in such applicable Section.

6. Mortgagor shall not transfer, sell or convey any legal or equitable interest in the Property (by deed, land contract, option, long-term lease or in any other way) without the prior written consent of Mortgagee, unless the indebtedness secured by this Mortgage is first paid in full. The entire indebtedness under the Note shall become due and payable in full, at the option of Mortgagee without notice, upon any transfer, sale or conveyance made in violation of this paragraph.

7. Mortgagor covenants not commit waste nor suffer waste to be committed on the Property, to keep the Property in good condition and repair, to keep the Property free from all liens and encumbrances except as otherwise provided herein, and to comply with all laws, ordinances and regulations affecting the Property. Mortgagor shall pay when due all indebtedness which may be or becomes secured at any time by a Mortgage or other lien on the Property superior to this Mortgage and any failure to do so shall constitute a default under this Mortgage.

8. Upon default or during the pendency of any action to foreclose this Mortgage, Mortgagor consents to the appointment of a receiver of the Property, to collect the rents, issues and profits of the Property, during the pendency of such an action, and such rents, issues and profits when so collected, shall be held and applied as the court shall direct.

9. Mortgagor hereby transfers and assigns absolutely to Mortgagee as additional security, all rents, issues and profits which become or remain due (under any form of agreement for use or occupancy of the Property or any portion thereof), or which were previously collected and remain subject to Mortgagor's control, following any default under this Mortgage or the Note secured hereby and delivery of notice of exercise of this assignment by Mortgagee to tenant or other user(s) of the Property. This assignment shall be enforceable with or without appointment of a receiver and regardless of Mortgagee's lack of possession of the Property.

10. The covenants and agreements herein contained shall bind and the rights hereunder shall inure to the respective successors and assigns of Mortgagee and Mortgagor. All covenants and agreements of Mortgagor shall be joint and several.

IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage this 18 day of June, 2004.

**PRESSED STEEL TANK CO., INC.**  
(“PST”)

By: Robert M. Darling  
ROBERT M. DARLING, President

Attest:

John R. Darling, Secretary

State of Wisconsin     )  
                                    ) ss  
Milwaukee County     )

Personally came before me this 18<sup>th</sup> day of June, 2004, the above-named ROBERT M. DARLING and JOHN R. DARLING, the President and Secretary of Pressed Steel Tank Co., Inc., who executed the foregoing instrument and acknowledged the same.

Witness my hand and official seal.

[Signature]  
Notary Public, State of Wisconsin  
My Commission Expires: is permanent

This instrument was drafted by and upon recording should be returned to:

Scott E. Post, City Attorney  
City of West Allis  
7525 West Greenfield Avenue  
West Allis, WI 53214  
(414-302-8450)

LAWYERS TITLE INSURANCE CORPORATION  
21075 Swenson Dr., Suite 900  
Waukesha, WI 53186  
Phone: (262) 798-2640  
Fax: (262) 798-2647

*Have updated, change T-1, revised 5, 6 & 7.  
added 8, 9, & 10. to B-1, Update 8. of B-2  
and added 16. to B-2*

November 21, 2002

### COMMITMENT DISTRIBUTION LETTER

RE: Our Case Number: 203580  
Address of Premises: 1445 S. 66th St.  
West Allis, WI.  
slesak@ci.west-allis.wi.us

Copies of the attached commitment for title insurance have been sent to the following as requested:

LENDER

LISTING BROKER  
City of West Allis  
Attn: Jeff Warchol  
7525 W. Greenfield Ave.  
West Allis, WI 53214  
P: 414-302-8450 F: 414-302-8444

SELLING BROKER

SELLERS ATTORNEY

BUYERS ATTORNEY

SELLER

BUYER

OTHER

If you have any questions regarding the attached commitment for title insurance, please contact . We look forward to providing closing services for this transaction. If you would like to schedule a closing time, please phone the number designated above and ask for the Closing Department. Thank you for selecting Lawyers Title to assist you. We look forward to serving you again in the near future.

# LTIC

## Lawyers Title Insurance Corporation

P.O. Box 117  
Waukesha, WI 53187-0117  
Phone: (262) 798-2640

June 17, 2004

City of West Allis  
Attn: Jeff Warchol  
7525 W. Greenfield Ave.  
West Allis, WI 53214  
P: 414-302-8450 F: 414-302-8444

Case No. 203580il  
Lot: 5 Block: 1  
Buyer: Community Development  
Buyer: Authority of the City of

rk  
Address: 1445 S. 66th St.  
Subdivision: Maynard/Agnew  
Seller: Fluid Technology, Inc  
Seller:  
slesak@ci.west-allis.wi.us

\*\*\*\*\* I N V O I C E \*\*\*\*\*

Owners Premium: 475.00  
Liability Amount: 500,000.00

Mortgage Policy Premium:  
Liability Amount:

Mortgage Policy Premium:  
Liability Amount:

Amended Report:  
Endorsements:

Letter Report:  
Escrow Fees:

Closing Fee (Buyer):  
Closing Fee (Seller/Owner):  
Construction Draw Fees:  
Exchange Fees:  
Inspections:

Recording Fees:  
Transfer Fee:  
Special Assessment Search Fee:

remainder of premium

kl

Total: 475.00

LAWYERS TITLE INSURANCE CORPORATION  
21075 Swenson Dr., Suite 900  
Waukesha, WI 53186  
P.O. Box 117  
Waukesha, WI 53187-0117  
PHONE: (262) 798-2640  
FAX: (262) 798-2647

REVISED  
COMMITMENT FOR TITLE INSURANCE  
SCHEDULE A

slesak@ci.west-allis.wi.us

1. EFFECTIVE DATE: May 17, 2004 at 5:59 a.m. Revision No. 2-kl (06/17/04)  
CASE NO. 203580

2. POLICY OR POLICIES TO BE ISSUED:  
(a)

AMOUNT \$ 500,000.00

x ALTA OWNER'S POLICY (10-17-92)  
ALTA RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)  
PROPOSED INSURED:

Community Development Authority of the City of West Allis

(b)

AMOUNT \$

ALTA LOAN POLICY (10-17-92)  
PROPOSED INSURED:

None

(c)

AMOUNT \$

PROPOSED INSURED:

None

3. TITLE TO THE FREE SIMPLE ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED TO IN THIS COMMITMENT IS AT THE EFFECTIVE DATE HEREOF VESTED IN :

Pressed Steel Tank Co., Inc. f/k/a Fluid Technology, Inc., a Delaware corporation, f/d/b/a Wisconsin Tank Company

4. THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:

See attached exhibit (Schedule A, Legal Description)

COUNTERSIGNED AT MADISON, WISCONSIN ts /ts

*[Signature]*  
Authorized Officer or Agent

Form No. 91-88 (SCH. A)  
035-1-088-0001/4

Schedule A.-Page 1

THIS COMMITMENT IS INVALID UNLESS  
THE INSURING PROVISIONS AND  
SCHEDULES A AND B ARE ATTACHED.

LAWYERS TITLE INSURANCE CORPORATION

CASE NO. 203580

SCHEDULE A  
LEGAL DESCRIPTION CONTINUED

ALL OF BLOCK 3, IN C. A. MAYNARD AND AGNEW'S SUBDIVISION NO. 3, BEING A PART OF THE  
NORTHEAST 1/4 OF SECTION 3, IN TOWNSHIP 6 NORTH, RANGE 21 EAST, IN THE CITY OF WEST  
ALLIS, MILWAUKEE COUNTY, WISCONSIN.

AND

LOT 5, IN BLOCK 1, IN ASSESSOR'S PLAT NO. 269, BEING A PART OF THE NORTHWEST 1/4  
NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 3, IN TOWNSHIP 6 NORTH, RANGE 21 EAST, IN  
THE CITY OF WEST ALLIS, COUNTY OF MILWAUKEE, STATE OF WISCONSIN.



## LAWYERS TITLE INSURANCE CORPORATION

## SCHEDULE B--SECTION 1

CASE NO. 203580

## REQUIREMENTS

THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and fully filed for record to-wit:

1. Payment and release of the premises to be insured from the lien of a mortgage from Fluid Technology Inc, a Delaware Corporation, d/b/a Wisconsin Tank Company to AMCA International Corporation to secure \$5,601,700.00 dated January 26, 1987 and recorded January 28, 1987 in the Office of the Register of Deeds for Milwaukee County, Wisconsin in Reel/Volume 2035, Image/Page 203, as Document Number 6014724 which was assigned to AMCA International Finance Corporation. Said Mortgage was subordinated to mortgage to the City of West Allis by Agreement, Document No. 6410594 for Mortgage Document No. 6410592.

NOTE: Said mortgage covers the above described premises and additional lands.

2. Payment and release of the premises to be insured from the lien of a mortgage from Pressed Steel Tank, Co., Inc. to City of West Allis to secure \$250,000.00 dated December 30, 1987 and recorded January 7, 1988 in the Office of the Register of Deeds for Milwaukee County, Wisconsin in Reel/Volume 2175, Image/Page 1475, as Document Number 6137401.

NOTE: Said mortgage covers the above described premises and additional lands.

3. Payment and release of the premises to be insured from the lien of a mortgage from Pressed Steel Tank Company, Inc. to City of West Allis to secure \$150,000.00 dated August 22, 1990 and recorded August 23, 1990 in the Office of the Register of Deeds for Milwaukee County, Wisconsin in Reel/Volume 2483, Image/Page 349, as Document Number 6410592.

NOTE: Said mortgage covers the above described premises and additional lands.

4. Partial Release of UCC Financing Statement showing Pressed Steel Tank Co., Inc. as debtor and LaSalle Bank National Association, 135 S. LaSalle Street, Chicago IL 60603 as secured party filed March 21, 2000 in the Office of the Register of Deeds for Milwaukee County, Wisconsin as Document Number 3814770.

(Continued)

THIS COMMITMENT IS INVALID UNLESS  
THE INSURING PROVISIONS AND  
SCHEDULES A AND B ARE ATTACHED.

SCHEDULE B-SECTION 1-PAGE 1  
Form No. 91-88 (B-1)  
035-I-088-0001/4

SCHEDULE B - SECTION I  
REQUIREMENTS CONTINUED

CASE NO. 203580

1

5. Warranty Deed from Pressed Steel Tank Co., Inc. f/k/a Fluid Technology Inc, a Delaware Corporation, f/d/b/a Wisconsin Tank Company, pursuant to proper corporate authority, conveying fee simple title to Community Development Authority of The City of West Allis.
6. Certified copy of proper corporate resolution by Pressed Steel Tank Co., Inc. f/k/a Fluid Technology Inc, a Delaware Corporation, f/d/b/a Wisconsin Tank Company approving the sale and authorizing those persons executing the conveyance required at Item No. 7 above to act on behalf of and bind said corporation.
7. Intentionally deleted.
8. Payment in full of delinquent real estate taxes for the year(s) 2002 and 2003 in the amount(s) of \$148,204.35 and \$33,874.61, plus penalty and interest.
9. Release of Construction Lien claim filed in the office of the Clerk of Circuit Court for Milwaukee County on February 28, 2003, as No. 2003CL000149, by Chicago Flameproof & Wood Specialities, against Fluid Technology, Inc., affecting the premises described herein in the sum of \$2,645.00.
10. Release of Construction Lien claim filed in the office of the Clerk of Circuit Court for Milwaukee County on September 19, 2003, as No. 2003CL000442, by Quality Concrete Products, Inc., against Fluid Technology, Inc., affecting the premises described herein in the sum of \$1,222.50.

## LAWYERS TITLE INSURANCE CORPORATION

CASE NO. 203580

## SCHEDULE B--SECTION 2

## EXCEPTIONS

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.

NOTE: Exception 1 will be removed only if no intervening matters appear of record between the effective date of this commitment and the recording of the instruments called for at Item (b) of Schedule B-1; or if gap coverage is issued in conjunction with this commitment and the requirements for the issuance of the coverage are met, including the payment of the premium.

2. Liens or deferred charges not shown on the tax roll for installations and connections of water and sewer laterals, mains and service pipes.

NOTE: Exception 2 will be removed only if the Company receives written evidence from the municipality that there are no such liens or deferred charges against the land, or that all such items have been paid in full.

3. Rights or claims of parties in possession not shown by the public records.

NOTE: Exception 3 will be removed only if the Company receives a completed Owner's Affidavit on the form furnished by the Company. If the Affidavit shows that there are tenants, Exception 3 will be replaced by an exception for the rights of the tenants disclosed by the Affidavit.

4. Such state of facts as would be disclosed by an accurate survey and inspection of the premises.

5. Easements or claims of easements not shown by the public records.

(Continued)

NOTE: IF POLICY IS TO BE ISSUED IN SUPPORT OF A MORTGAGE LOAN, ATTENTION IS DIRECTED TO THE FACT THAT THE COMPANY CAN ASSUME NO LIABILITY UNDER ITS POLICY, THE CLOSING INSTRUCTIONS, OR INSURED CLOSING SERVICE FOR COMPLIANCE WITH THE REQUIREMENTS OF ANY CONSUMER CREDIT PROTECTION OR TRUTH IN LENDING LAW IN CONNECTION WITH SAID MORTGAGE LOAN.

THIS COMMITMENT IS INVALID UNLESS  
THE INSURING PROVISIONS AND  
SCHEDULES A AND B ARE ATTACHED

SCHEDULE B-SECTION 2-PAGE 1  
Form No. 91-86 (B-2) WI  
035-1-086-4804/1

SCHEDULE B  
EXCEPTIONS CONTINUED

CASE NO. 203500

NOTE: Exceptions 4 and 5 will be removed only if the Company receives an original survey which (1) has a current date, (2) is satisfactory to the Company, and (3) complies with current ALTA/ACSM Minimum Survey Standards or Wisconsin Administrative Code AE-7. If the survey shows matters which affect the title to the property, Exceptions 4 and 5 will be replaced by exceptions describing those matters.

6. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished imposed by law and not shown by the public records.

NOTE: Exception 6 will be removed only if the Company receives a completed Owner's Affidavit on the form furnished by the Company and the following is true:

No work done: The Affidavit must establish that there has been no lienable construction work in the previous six months.

Repair work done: If repair work has been done on an existing structure in the last six months, the Affidavit must accurately disclose all parties who have done lienable work in the last six months, and have attached to it original full waivers of lien from each person or company.

New construction: If the property contains a newly-built structure, the Affidavit must incorporate a complete list of all parties who have done lienable work in the last six months, and have attached to it original full waivers of lien from each person or company. If Exception 6 is removed, it will be replaced by the following exception: "Any construction lien claim by a party not shown on the Owner's Affidavit supplied to the Company." (This exception applies only to the Owner's Policy.)

7. Liens, hook-up charges or fees, deferred charges, reserve capacity assessments, impact fees, or other charges or fees due and payable on the development or improvement of the land, whether assessed or charged before or after the Date of Policy.

(Continued)

**SCHEDULE B**  
**EXCEPTIONS CONTINUED**

CASE NO. 203580

NOTE: Exception 7 will be removed only if the Company receives (1) written evidence from the municipality that there are no deferred charges, hookup fees, or other fees or charges attaching to the property; (2) evidence that the land contains a completed building; and (3) a statement showing that the land has a water and sewer use account. If the land is vacant, this exception will not be removed.

8. Taxes for the year 2004 and subsequent years. Parcel No. 454-0231-000.
9. Special taxes or assessments, if any.
10. Title to any equipment, fixtures, appliances, tanks, machinery or installations, except such as is finally determined to be part of the insured premises, determination of which shall not be part of the obligation of the company.
11. Rights or claims, if any, of tenant(s) in possession under unrecorded lease(s).
12. Restrictions, options, conditions and requirements as set forth in Redevelopment Plan adopted by the Redevelopment Authority of the City of Milwaukee designated "Redevelopment Plan for the Six Points/Farmers Market Redevelopment Project", recorded on February 22, 2001 as Document No. 8027619; Amendment recorded November 26, 2001 as Document No. 8175523; Second Amendment recorded December 17, 2001 as Document No. 8185313.
13. Notice of Pendency of Resolution for the Vacation and Discontinuance of S. 66th Street recorded February 6, 2001 as No. 7236 and re-recorded February 20, 2001 as No. 7237.
14. Notice of Pendency of Resolution for the Vacation and Discontinuance of S. 66th Street recorded March 6, 2001 as No. 7238.
15. Resolutions as to vacating streets and alleys recorded December 21, 2001 as Document No. 8188820 and on July 21, 2002 as Document No. 8312180.

(Continued)

**SCHEDULE B  
EXCEPTIONS CONTINUED**

**CASE NO. 203580**

16. Terms and conditions contained in an Order to Raze Building recorded December 12, 2002 in the Office of the Register of Deeds for Milwaukee County, Wisconsin in Reel 5475, Image 4009, as Document Number 8407453.

The property address as indicated per tax roll is: 1445 S. 66th St., West Allis, WI.