

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ (the “Effective Date”), between the City of Crossville, Tennessee, a municipal corporation organized under the laws of the State of Tennessee (the “Seller”) and Aviagen, Inc., a Delaware corporation (the “Purchaser”).

WHEREAS, Seller has agreed to sell and Purchaser has agreed to purchase the Property (as hereinafter defined);

NOW, THEREFORE, in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Property. Seller hereby agrees to sell and Purchaser, or its designee, hereby agrees to purchase from Seller certain real property situated in Crossville, Cumberland County, Tennessee, comprising approximately 3.674 acres and more particularly described on **Exhibit A** hereto and hereby incorporated by reference herein, together with all improvements located thereon and all rights, hereditaments and appurtenances thereto belonging (collectively, the “Property”).

2. Purchase Price.

2.1 The purchase price (the “Purchase Price”) of the Property shall be an amount equal to NINETY-ONE THOUSAND EIGHT HUNDRED AND FIFTY Dollars (\$91,850.00).

2.2 Purchaser shall deposit the Purchase Price with Bradley Arant Boulton Cummings, LLP as escrow agent (the “Escrow Agent”), with such funds to be maintained by Escrow Agent and to be administered and payable in accordance with an escrow agreement in the form attached as **Exhibit B** (the “Escrow Agreement”). Subject to the terms of the Escrow Agreement: (i) the Purchase Price shall be held by the Escrow Agent for a period of thirty-six (36) months following the Closing Date, as hereinafter defined (the “Escrow Period”); (ii) during such Escrow Period, the Escrow Agent (as further determined by the provisions of the Escrow Agreement) shall periodically disburse amounts of the Purchase Price to the Purchaser; and (iii) at the conclusion of the Escrow Period, any monies held by the Escrow Agent that have not been disbursed to the Purchaser, shall at such time be disbursed to the Seller. Any and all fees charged by the Escrow Agent shall be payable by the Purchaser.

3. Inspection Period.

3.1 Purchaser shall have until 5:00p.m. local time on the date that is thirty (30) days after the Effective Date (the “Inspection Period”) to make such determinations with respect to the Property and Purchaser’s intended use thereof as Purchaser deems appropriate and to elect to either continue or terminate this Agreement. Prior to the expiration of the Inspection Period,

Purchaser will either (a) advise Seller, in writing, that this agreement is terminated, in which case this Agreement shall terminate, and neither party shall have any further obligations to the other excepting those obligations which are expressly provided in this Agreement to survive termination, or (b) advise Seller, in writing, that this Agreement shall continue in effect, and both parties shall proceed to Closing.

3.2 During the Inspection Period, Purchaser shall use commercially reasonable efforts to obtain or determine whether it can obtain the necessary approvals from the requisite governmental authorities to construct on the Property a laboratory facility adjoining the existing Aviagen, Inc. property adjacent to the Property (the "Intended Use").

3.3 Within fifteen (15) days following the execution of this agreement by Seller, Seller shall deliver to Purchaser copies of the most recent title insurance policies, surveys subdivision maps, site, parcel or development plans, and all soil test reports and environmental study results relating to the Property which Seller has in its possession or otherwise readily available to Seller.

3.4 Purchaser and Purchaser's agents, employees and independent contractors shall have the right and privilege to enter upon the Property during the Inspection Period to survey and inspect the Property and to conduct soil borings, toxic waste studies and other geological, engineering or landscaping tests or studies, all at Purchaser's sole cost and expense. Purchaser hereby covenants and agrees to indemnify and hold harmless Seller from any and all loss, liability, cost, claim, demand, damage, action, cause of action and suit arising out of or in any manner related to the exercise by Purchaser of Purchaser's rights under this section.

#### 4. Costs and Prorations.

4.1 Purchaser shall pay for all transfer taxes and recording costs applicable to the deed of transfer, the costs of preparation of the deed of transfer, title insurance for the Property, and the costs of production of the abstract. Each party shall pay their own attorney's fees.

4.2 Ad valorem property taxes constituting a lien against the Property for the year in which the Closing occurs and all other unpaid assessments with respect thereto shall be prorated as of the Closing Date as defined in Section 6. In the event such proration is based upon a previous year's taxes or assessment, after Closing, at such time as any of the taxes or assessments are capable of exact determination, the party having the information permitting the exact determination shall send to the other party a detailed report of the exact determination so made. Within twenty (20) days after both Seller and Purchaser shall have received such report, Seller and Purchaser shall adjust the amounts apportioned pursuant to the estimates made at Closing to reflect the exact determinations contained in the report, and Seller or Purchaser, as the case may be, shall pay to the other whatever amount shall be necessary to compensate for the difference.

5. Conditions Precedent to Closing. Seller acknowledges and agrees that as a condition precedent to Purchaser's obligations hereunder, the following shall occur on or before the Closing Date, any of which conditions may be waived by Purchaser in its sole discretion:

(a) Each of the representations and warranties made by Seller herein shall be true and complete on the Closing Date as if made on such date.

(b) Seller shall have performed all obligations which it is required to perform on or before the Closing Date pursuant to the provisions of this Agreement.

(c) Purchaser's title insurer shall be ready, willing and able to insure title to the Property, subject only to the Permitted Exceptions (as herein defined).

6. Closing. Subject to all preconditions set forth herein, the closing or settlement ("Closing") of the transaction contemplated hereby, unless terminated in accordance with Section 3 or as otherwise agreed upon by Purchaser and Seller, shall be held at the offices of William T. Ridley, Esq., 157 Lantana Road Crossville, Tennessee 38555 at 10:00 a.m. on the fifteenth (15<sup>th</sup>) day following the expiration of the Inspection Period, (such date shall be referred to herein as the "Closing Date") or such other date mutually agreed upon by Purchaser and Seller in writing.

At Closing, Seller shall convey to Purchaser good, marketable and insurable title to the Property by general warranty deed, subject to (i) standard exceptions for real property taxes not yet due and payable, and (ii) applicable subdivision restrictions and requirements and requirements of local zoning ordinances applicable thereto all of which, in any event, must be acceptable to Purchaser in the exercise of its reasonable judgment (the "Permitted Exceptions").

7. Closing Documents. At or prior to Closing, each party shall deliver to the other party appropriate evidence to establish the authority of such party to enter into and close the transaction contemplated hereby. Seller also shall execute and deliver to Purchaser at Closing (i) a general warranty deed acceptable to Purchaser; (ii) a certificate with respect to Section 1445 of the Internal Revenue Code stating, among other things, that Seller is not a foreign corporation as defined in the Internal Revenue Code and I.R.S. Regulations; (iii) such affidavits and other instruments reasonably required by Purchaser's title insurer in order to remove the so-called "standard" exceptions from Purchaser's title insurance policy, and (iv) such other documents reasonably necessary or appropriate to complete and evidence the transaction contemplated hereby.

8. Survey.

8.1 Prior to Closing, Purchaser may, at Purchaser's sole option and at Purchaser's expense, cause an exact boundary ALTA survey of the Property (the "Survey") to be prepared by a reputable registered surveyor. Said Survey shall indicate the exact square footage of the Property, together with the metes and bounds and acreage of any and all portions of the Property located within (a) any public right of way (including any proposed right of way or any proposed widening of any existing right of way), (b) any body of water, (c) any 100-year flood plain, (d) any marshlands or wetlands and (e) any easement areas, buffer zones or natural preserves in which the construction of buildings is prohibited by any law, ordinance, regulation or private covenant including PUD conditions governing the Property.

8.2 Notwithstanding the foregoing, in the event Seller has, within the twelve (12) months prior to the Effective Date of this Agreement, caused a survey to have been prepared relative to the Property, Seller agrees to provide such survey(s) to Purchaser within fifteen (15) days of the Effective Date of this Agreement. For purposes of this Agreement, the term "Survey" shall include any survey produced by Seller to Purchaser hereunder.

8.3 The description of the Property reflected on **Exhibit A** hereto shall automatically be amended to conform to the legal description based on any Survey hereunder, and thereafter, the new legal description shall be the legal description of the Property for all purposes relating to this Agreement.

9. Title. Within thirty (30) days of the date of this Agreement, Purchaser shall procure a title insurance commitment in the amount of the Purchase Price covering the Property issued by a Title Company selected by Purchaser (the "Title Commitment") and furnish a copy thereof to Seller. Purchaser shall have until thirty (30) days from the date of receipt thereof within which to object to any defects to title shown on the Title Commitment or the Survey (other than Permitted Exceptions) and to notify Seller in writing of any objections by Purchaser. If Purchaser gives Seller valid notice of objection to any title defect, Seller shall have the option to cure or satisfy such objections (or commence to cure or satisfy such objections as long as Seller reasonably believes such objections may be cured or satisfied prior to Closing) within fifteen (15) days after receipt of the notice. In the event Seller chooses not to cure or satisfy any objection identified pursuant to the foregoing sentence, or in the event any objection is not satisfied by Seller by the scheduled date of Closing, Purchaser shall have the right to terminate this Agreement, in which case neither party shall have any further rights, obligations or duties under this Agreement. Notwithstanding any provision herein to the contrary, if the Property is encumbered by subdivision or other restrictions which would prohibit the use of the Property for Purchaser's intended purpose, such may be objected to by Purchaser as a title defect.

If Seller does cure or satisfy the objections, then this Agreement shall continue in effect. Any exception to or defect in title which Purchaser shall elect to waive, or which is otherwise acceptable to Purchaser, shall be deemed an additional Permitted Exception to title at Closing. Seller covenants and agrees not to alter or encumber in any way Seller's title to the Property after the date hereof.

10. Representations and Warranties. Seller does hereby represent to Purchaser as of the Effective Date, and as of the Closing Date, the following:

10.1 There are no rights of first refusal, options or unexpired purchase contracts relating to the Property.

10.2 There are no leases or tenancies of the Property, or if there are leases or tenancies listed on **Exhibit C**, that (i) Seller is not in default in the performance of its obligations in connection with such leases or tenancies and has not received any notices alleging a default by Seller; (ii) each tenant under such leases or tenancies is not in default in the performance of its obligations in connection with its lease or tenancy and no notices of default have been given to

any tenant; and (iii) no payment of rent has been made more than 30 days in advance of its due date.

10.3 Seller has good and marketable fee simple title to the Property.

10.4 Seller has not received notice of any (i) actual or threatened condemnation of the Property, (ii) violations of law relating to the Property, (iii) violations of deed restrictions, declarations or similar restrictions encumbering the Property, or (iv) mechanics' liens or other liens against the Property.

10.5 There is no pending litigation or, to Seller's knowledge, threatened litigation relating to the Property.

10.6 To Seller's knowledge, (i) the Property is not in violation of any laws or ordinances relating to industrial hygiene or environmental conditions, (ii) there are no "Hazardous Materials" (defined below) on the Property, (iii) there are no underground storage tanks on the Property, and (iv) Hazardous Materials have not been used, generated or disposed of on the Property or transported from the Property. "Hazardous Materials" means any substance or waste which is regulated as a hazardous substance, hazardous waste, pollutant, contaminant or similar classification under any federal, state or local law.

10.7 Seller is (i) duly organized and validly existing and in good standing under the laws of the state in which it was formed, (ii) validly existing and in good standing in the state in which the Property is located, and (iii) has the authority to own and convey the Property.

10.8 This Contract and all documents executed by Seller pursuant to this Agreement are, or on the Closing Date will be, duly authorized, executed and delivered by Seller, and do not and will not violate any provisions of any agreement or judicial order to which Seller is a party or to which Seller or the Property are subject.

10.9 There are and there will be no parties in possession of any portion of the Property as lessees, tenants at sufferance, trespassers or otherwise, and no party has been granted a license or lease or other right pertaining to the use or possession of the Property.

10.10 The Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the Property.

10.11 The Seller has not received any notice, nor is the Seller aware, of any violation of any ordinance, regulation, law, statute, rule or restriction relating to the Property.

10.12 The execution and delivery of this Agreement, the consummation of the transaction herein contemplated and the compliance with the terms and provisions hereof will not conflict with or (with or without notice or the passage of time or both) result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, loan agreement or instrument to which the Seller is a party or by which the Seller or the Property is bound, any

applicable regulation or any judgment, order or decree of any court having jurisdiction over the Seller or the Property.

10.13 There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under any applicable debtor relief laws or any other litigation contemplated by or pending or threatened against the Seller or the Property.

10.14 [Intentionally Omitted]

10.15 [Intentionally Omitted]

11. Vendor Contracts. Seller may have entered into maintenance and service contracts for the Property, all of which, unless otherwise mutually agreed in writing by Seller and Purchaser prior to the expiration of the Inspection Period, shall be terminated at or prior to Closing. Seller shall indemnify, defend and hold Purchaser harmless from and against all claims for payment by such contractors for services with respect to the Property rendered prior to the Closing Date. The provisions of this Section shall survive the Closing of this transaction.

12. Broker and Broker's Commission. Purchaser and Seller each represent and warrant to the other that such party has not incurred an obligation to any broker or agent in connection with the transaction contemplated hereby. Each party hereby covenants and agrees to defend, indemnify and hold harmless the other party against and from any and all loss, expense, liability, cost, claim, demand, damage, action, cause of action and suit arising out of or in any manner relating to the alleged employment or sue by such party of any other real estate broker or agent in connection with this transaction. The provisions of this Section 12 shall survive the Closing of this transaction.

13. Eminent Domain. If, after the Effective Date and prior to Closing, Seller shall receive notice of the commencement or threatened commencement of eminent domain or other like proceedings against the Property or any portion thereof, Seller shall immediately notify Purchaser in writing, and Purchaser shall elect within thirty (30) days from and after such notice, by written notice to Seller, one of the following: (a) not to close the transaction contemplated hereby, in which event this Agreement shall be void and of no further force and effect; or (b) to close the purchase of the Property contemplated hereby in accordance with its terms but subject to such proceedings, in which event the Purchase Price shall remain the same and Seller shall transfer and assign to Purchaser at Closing all condemnation proceeds and rights to additional condemnation proceeds, if any. If Purchaser elects to purchase after receipt of such a notice, all actions taken by Seller with regard to such eminent domain proceedings, including but not limited to, negotiations, litigation, settlement, appraisals and appeals, shall be subject to the approval of Purchaser, which approval shall not be unreasonably withheld. If Purchaser does not make such election within the aforesaid time period, Purchaser shall be deemed to have elected to close the transactions contemplated hereby in accordance with clause (b) above.

14. Casualty. If the Property is materially damaged by fire, flood or other casualty prior to Closing, Purchaser may elect to terminate this Agreement by written notice to Seller. If

Purchaser does not elect to terminate, then at Purchaser's option (which shall be exercised by notice to Seller given on or before the Closing Date), either (a) the Closing Date shall be extended until the thirtieth (30<sup>th</sup>) day following the completion of repairs and restoration of the Property, and Seller shall proceed with reasonable diligence to complete such repairs and restoration, or (b) the Closing shall take place as scheduled and, at Closing, Seller shall assign to Purchaser the insurance proceeds resulting from such damage and credit Purchaser with the amount of any deductible under Seller's insurance policy.

15. Condition of Property.

15.1 Purchaser hereby agrees to accept the Property in its "as-is" condition with all faults then existing at Closing and with no representations or warranties of merchantability or fitness for a particular purpose, either express or implied.

15.2 Subsequent to the Effective Date and prior to Closing, Seller shall maintain the Property in accordance with its past practices and ordinary maintenance, but shall not be required to provide any extraordinary maintenance.

16. Notices. Each notice required or permitted to be given hereunder shall be sent by hand delivery, nationally recognized overnight courier (e.g., FedEx), or by certified mail with return receipt requested and adequate postage prepaid, addressed to the appropriate party (and marked to a particular individual's attention) as hereinafter provided and shall be deemed effective upon such delivery or, in the case of notice sent by overnight courier or by mail, upon deposit with such courier service or with the U.S. mail as applicable, correctly addressed, with adequate prepaid postage affixed thereto. Rejection or other refusal by the addressee to accept shall be deemed to be receipt of the notice sent. The addresses of the parties to which notices are to be sent shall be those set forth on the signature page of this Agreement, provided that a copy of any notice to Purchaser shall also be sent to Cullen J. Brown, Bradley Arant Boult Cummings LLP, 200 Clinton Avenue West, Suite 900, Huntsville, Alabama 35801. Any party shall have the right from time to time to change the address to which notices to it shall be sent to another address and to specify two additional addresses to which copies of notices to it shall be mailed by giving to the other party at least thirty (30) days prior notice of the changed address or additional addresses.

17. Remedies.

17.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee without application of conflict of law principles. Except as provided in Section 17.2, all disputes relating to enforcement, interpretation and performance under this Agreement must be resolved by binding arbitration. The parties will use the procedures adopted by the American Arbitration Association ("AAA") for binding arbitration, or such other dispute resolution procedures to which the parties mutually agree, but in all cases unless the parties agree otherwise the following rules will apply: (a) the arbitration must be held in Cumberland County, Tennessee, unless otherwise agreed to by the parties; (b) the arbitrator must be a retired judge or licensed attorney with substantial experience in commercial real estate matters; (c) the arbitrator will be selected by agreement of the parties and if they fail to agree, by AAA; (d) the arbitrator may require one or more pre-hearing conferences; (e) the parties are entitled to conduct discovery

in the same manner as if the matter were being tried in court and the arbitrator will oversee discovery and may issue and enforce discovery orders in the same manner as a trial court judge; (f) a stenographic record of the arbitration hearing may be made at the request of either party; (g) the arbitrator's decision must be written and must contain findings of fact and conclusions of law, as applicable; and (h) the arbitrator will have the power to grant all forms of relief as if the matter were tried before a court. The arbitrator's decision is binding upon the parties and judgment may be entered by filing the decision with the appropriate court located in the county in which the arbitration was held.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING ARBITRATION PROVISION AND ACCEPT THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

17.2 Notwithstanding any provision to the contrary, the Parties shall not be subject to the arbitration provision of Section 17.1 to the extent either Party seeks the remedy of specific performance of this Agreement in the event that either: (i) this transaction fails to close by reason of Purchaser's wrongful failure to perform its obligations under this Agreement; or (ii) Seller fails or refuses to convey the Property in accordance with the terms hereof or this transaction fails to close by reason of Seller's wrongful failure to perform its obligations under this Agreement. The Parties acknowledge that any such action for specific performance may be brought in the courts of Cumberland County, Tennessee.

#### 18. Miscellaneous.

18.1 Each party hereto warrants and represents that such party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a party warrants and represents that he or she has been fully authorized to execute this Agreement on behalf of such party and that such party is bound by the signature of such representative.

18.2 Time is of the essence of this Agreement. As used in this Agreement, "Business Day" shall mean and refer to a day on which federally-insured banks and the Madison County Probate Office are all open for business. When any time period specified herein falls or ends upon a day that is not a Business Day, the time period shall be automatically extended to 5:00 P.M. on the next ensuing Business Day.

18.3 This Agreement constitutes the entire agreement of the parties and may not be amended except by written instrument executed by Purchaser and Seller. No waiver shall be binding unless executed in writing by the party waiving the provision. If any action by any party shall require the consent or approval of another party, such consent or approval of such action on any one occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action.

18.4 Seller shall deliver actual possession of the Property at Closing.



18.5 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns as the case may be and Purchaser shall have the right to assign its rights hereunder.

18.6 The fact that one of the parties to this Agreement may be deemed to have drafted or structured any provision of this Agreement shall not be considered in constructing or interpreting any particular provision of this Agreement, either in favor or against such party.

18.7 This Agreement may be executed in counterparts and, as so executed, shall constitute one agreement binding on all parties. Either party may deliver its signature to this Agreement by telecopy or electronic mail and any party that receives an executed signature page from another party by telecopy or electronic mail may rely upon said signature as if it was a signed original, but each party shall thereafter immediately deliver an executed original to the other party.

18.8 [Intentionally Omitted]

*[Signature Page Follows]*

IN WITNESS WHEREOF, this Agreement has been duly executed on the day and year first above written.

**PURCHASER:**  
**AVIAGEN, INC,** a Delaware corporation

**SELLER:**  
**CITY OF CROSSVILLE,** a municipal corporation organized under the laws of the State of Tennessee

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

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

Aviagen Inc.  
ATTN: Keith Lewis  
920 Explorer Boulevard NW  
Huntsville, AL 35806

City of Crossville  
ATTN: Mayor James Mayberry  
392 N. Main St.  
Crossville, TN 38555

**EXHIBIT A**  
**Property Description**

**EXHIBIT B**  
**Escrow Agreement**

**EXHIBIT C**

**Leases**