

## SALE AND DEVELOPMENT AGREEMENT

**RECITALS:**

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- A. Certificate of Completion: The Certificate of Completion issued to the Developer by the Commission upon completion of the Improvements, which will certify that all construction requirements of this Agreement have been satisfied.
- B. Closing: The Closing contemplated herein shall mean the sale and transfer of the Property by execution, delivery, and recording of special warranty deed by the City and the Commission, as applicable, to the Developer (hereinafter the "Special Warranty Deed").
- C. Federal Requirements: All applicable federal, state, and local requirements, rules, and regulations, including, but not limited to those governing the federal Community Development Block Grant program, the Final Rule which was adopted by the Department of Housing and Urban Development (hereinafter "HUD") effective December 11, 1995 (codified at 24 CFR Part 570) and subsequent amendments thereto.
- D. Improvements: All construction, buildings, paving, parking, landscaping, all components of site preparation and site infrastructure, and any other improvements or development on the Property to be performed by the Developer which shall also include, without limitation, underground utilities, landscaping, surface parking, and common areas; as well as senior-living multi-family residential units for rent, shall herein be collectively defined as the Improvements.
- E. Parcel(s): The individual Parcels acquired by the Commission and City for the purpose of redevelopment that comprise the Property, as shown on the attached **Exhibit B: City Survey** and further described in Article 1.2.
- F. Plat(s): Preliminary and final subdivision plats for the Property as recorded in whole or in sections by the Commission and the City.
- G. Property: A combination of parcels owned by the Commission and City totaling approximately (3) acres and intended for sale to the Developer that is the subject of this Agreement, as described on attached **Exhibit C: Property Description** and as shown on **Exhibit B: City Survey**, and further described in Article 1.2. Site preparation shall refer to activities associated with Improvements on the Property.
- H. Restrictions: All covenants, restrictions, encroachments, and other matters of record, including, but not limited to any restrictions included in the deeds of Parcels to the Developer or Lots to Purchasers.

**1.2 Property Description.** The property that is the subject of this Agreement consists of that real property located in Greensboro, North Carolina, being subject to the Restrictions, and consisting of approximately three (3) acres, on two parcels split horizontally by the right of way at Douglas Avenue, bounded on the north by the right-of-way of Bragg Street, on the east by the right-of-way of Pearson St., on the south by a privately owned single-family dwelling, and to the west by the right-of-way of Martin Luther King Jr. Drive and a commercial retail property. These boundaries of the property are more particularly described on the survey attached hereto marked as Exhibit B: City Survey, which is incorporated herein by reference.

Said Property is also that land denoted as "A-3" and "A-4" in in the Martin Luther King North Traditional Neighborhood Plan (MLK TND Plan), which is the guiding planning document for this geography.

The real property owned by Commission is known as A-4, consists of approximately 1.12 acres, and includes the following Guilford County Parcels:

Parcel #	Address	Acre	MLK-N Parcel
0002848	526 Douglas Street	0.74	A-4
0002849	528 Douglas Street	0.15	A-4
0002864	532 Douglas Street	0.23	A-4

The real property owned by the City is known as A-3, consists of approximately 1.68 acres, and includes the following Guilford County Parcel:

Parcel #	Address	Acre	MLK-N Parcel
0014290	503 Martin Luther King Dr.	1.68	A-3

The aboved listed parcels are more particularly described in Exhibit C.

**1.3 Incorporation of Recitals.** The Commission, the City, and the Developer agree that all words and terms contained within the Recitals are for purposes of historical perspective and shall also be considered terms of the Agreement.

**1.4 Contract Documents.** This Agreement, together with its Exhibits and those document required to be produced by Developer to Seller prior to Closing including, but not limited to, those documents set out in Paragraph 3.14.

**1.5 Term of Agreement.** Subject to early termination as expressly provided in this Agreement, the term of this Agreement and of the Developer's designation and status hereunder shall be and continue for the latter of the completion of all activities to be performed under this Agreement or twenty-four (24) months from the date of full execution hereof. In the event termination occurs as a result of the running of the twenty-four month period from date of full execution by the parties hereto and Developer has not completed the Improvements, then Developer shall be in default of this Agreement. Should market conditions require that additional time be required to complete the activities to be performed under this agreement, the Developer may request in writing that the Commission and City consider an Agreement extension for an additional period of one (1) year. The term of this Agreement, including extension shall in no event exceed three (3) years in total. Approval of such extension request shall not be unreasonably withheld.

**1.6 Limitation of Agreement; No Public Funding.** Developer acknowledges and agrees that this Agreement does not obligate or commit any public funds of the Commission or the City. The Agreement contemplates that one or more separate Agreement(s) may be entered into between the City, the Developer, and the Commission regarding the funding and construction of site preparation and streetscape/infrastructure improvements, but the inclusion or indication of the need for such agreement(s) in no manner shall be deemed to be, construed or interpreted as an obligation on the part of the Commission or the City to execute any such agreement merely by virtue of its mention as a condition within this Agreement.

## **Article 2. Overall Conduct of the Parties**

**2.1 Cooperation.** The Commission, the City, and the Developer shall cooperate with one another in good faith to perform and complete all obligations of this Agreement. Such cooperation shall include reasonable efforts to respond to one another as expeditiously as possible with regard to requests for information or approvals required hereby and prompt proactive sharing of information pertinent to the

carrying out and orderly progression of the activities contemplated hereby, including forwarding of all relevant correspondence, directives, and other relevant written material. With regard to materials or documents requiring the approval of one or more parties, if such materials or documents are not approved as initially submitted, then the parties shall engage in such communication as is necessary under the circumstances to resolve the issues resulting in such disapproval.

**2.2 Certain Approvals.** The Commission, City and the Developer agree that from time to time periodic approvals from both parties may be required hereunder. The parties acknowledge and agree that any contract with third party contractors, lenders, or other parties for any services, materials or other matters of any form, which is intended to obligate another party hereto in any manner including payment of the same must be expressly approved by such other party.

### **Article 3. Warranties/Duties/Responsibilities of the Developer**

**3.1 Organization and Powers.** The Developer represents and warrants that it is a Georgia limited liability company validly existing and in good standing under the laws of the Georgia and is authorized to do business in North Carolina. The Developer has the power and authority to own its assets and properties, to carry on its activities as now conducted by it, and to execute, deliver, and perform under this Agreement. The execution, delivery, and performance by the Developer of this Agreement have been duly authorized by all requisite action.

**3.2 Litigation, Limited Denial of Participation or Debarment.** There is no action, suit, or proceeding pending or threatened before any court or government or administrative body or agency which may reasonably be expected to (a) result in a material adverse change in the activities, operations, assets, or properties or in the condition, financial or otherwise, of the Developer, or (b) impair the ability of the Developer to perform its obligations under this Agreement. The Developer is not in default with respect to any judgment, writ, injunction, decree, rule, or regulation of any court or any governmental or administrative body or agency.

**3.3 Quality of Work under This Agreement.** All the activities performed pursuant to this Agreement shall be conducted in accordance with (a) generally accepted standards for similar developments in North Carolina; (b) standards, criteria and other requirements imposed by applicable statutes, regulations, ordinances, and orders of all governmental authorities having jurisdiction; (c) the same standards of care and diligence that the Developer employs in carrying out other similar projects for which it is the Developer; and (d) the terms of this Agreement.

**3.4 Compliance with Laws and Permits.** The Developer shall use commercially reasonable efforts to assure that the parties contracted by or through Developer constructing Improvements on the Property construct those Improvements in compliance with all applicable federal, state and local laws, codes, ordinances, rules and regulations and with all permits. The Developer shall fully comply with all applicable laws and regulations with respect to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, licensing, and other employer-employee related matters, including, without limitation, all laws, rules, and regulations with respect to non-discrimination based on race, sex or otherwise.

**3.5 Taxes, Insurance and Other Assessments.** The Developer shall pay all taxes and assessments with respect to the Property after conveyance thereof to it, if any, when due and require the same of all subcontractors and leaseholders who have been given such responsibilities. General liability insurance coverage must be written showing the names of the insured to be the Developer, the City, and the

Commission as their interests may appear. The Developer shall provide evidence of such insurance to the Commission prior to closing.

**3.6 Documents.** The Developer warrants and represents that all Contract Documents submitted to the Commission by the Developer, at the minimum one (1) month prior to closing, will be valid, complete, and accurate.

**3.7 Planning Oversight.** Developer is responsible for overseeing all development activities and using commercially reasonable efforts to ensure that these activities conform to the goals and objectives of the revitalization project envisioned under the Redevelopment Plan, including development planning, solicitation of prospective subdevelopers, negotiating and assisting in preparation of subcomponent developer agreement(s), soliciting prospective builders and subcontractors, plan approvals and permitting, construction oversight and marketing, all as more specifically outlined in this Agreement.

**3.8 Personnel.** Developer represents that it has or will secure, at its own expense, all personnel required to perform the services required of it pursuant to this Agreement.

**3.9 Access to Records.** The City and Commission, and any of its duly authorized representatives, shall have access to any books, documents, papers, and records of the Developer that are not attorney-client privileged and are directly related to the Developer's services under this Agreement for the purpose of making audit, examination, excerpts, and transcriptions at all times during the term and duration of this Agreement and thereafter for seven (7) years from the completion of Developer's services under this Agreement or termination of this Agreement, whichever is later. Developer agrees to reasonably cooperate with the City in granting access to such books and records. The City's access to such books and records shall be at the location at which such books and records are kept in the course of the Developer's business, the Developer shall not be required to compile or prepare special studies or analyses, and any inspections by the City or Commission shall be conducted during normal business hours and in a manner so as not to unreasonably disrupt or interfere with Developer's business operations. Additionally, Developer agrees to allow on-site visits by representatives of the City's Internal Audit Division and will allow them to review Developer's applicable records. All inspections and copying shall be made at the City's cost. The Developer may redact any financial information that is not directly related to this Agreement.

**3.10 Monitoring and Reporting.** During the term of this Agreement, Developer will provide written quarterly reports to the Commission detailing status of work completed, anticipated timeline and any changes that have occurred, beginning from the execution of this Agreement.

**3.11 Construction Requirements.** The Developer acknowledges that federal funding was used by the Commission and City to assemble the Property and hereby assures and certifies to conduct and administer the activities and funds under this Agreement in compliance with to the extent applicable to all applicable requirements referenced herein. In all aspects of preparation for and performance of the contemplated construction of Improvements, the Developer shall fully adhere to the following: (a) the Ole Asheboro Redevelopment Plan, which can be viewed on the City's website at <https://www.greensboro-nc.gov/departments/planning/learn-more-about/plans-studies>. In all aspects of preparation for and performance of the contemplated construction of Improvements, the Developer shall fully adhere to all documents and guidelines set forth in Article 3.14, and to the City of Greensboro M/WBE Program policies, attached hereto marked as Exhibit D.

**3.12 Improvements.** Subject to and only upon all approvals specified in this paragraph, the Developer shall construct senior living multi-family units, and other Improvements in accordance with **Exhibit A: Proposed Development Plan**, attached hereto.

In addition to compliance with City zoning and development regulations, all Improvements shall adhere to the requirements of and be approved according to the processes outlined in the Ole Asheboro Redevelopment Plan.

All construction, buildings, paving, parking, landscaping, and any other improvements or development on the Property to be performed by the Developer are hereby collectively defined as the Improvements, including all components of site preparation and site infrastructure, including but not limited to underground utilities, landscaping, surface parking, and common Areas; resulting in at least 72 senior-living multi-family residential units for rent or approximately 81 of such units as established by the Proposed Development Plan.

Compliance with initial occupancy requirements shall be the responsibility of the Developer.

No site preparation, including but not limited to grading of or on the Property, shall occur until the Developer shall submit and receive approval by the City, or its designee, employees, or agents, of site plans, which must be approved in full prior to commencement of any construction and work on any Improvements. After approval of such initial construction of the Improvements, no subsequent modification, change or alteration of the Improvements by the Developer shall be made without the Developer first submitting to and receiving the approval by the Commission as to the same.

Any references in this Agreement to “senior-living” shall be deemed to refer to persons aged 55 years or older.

**3.13 Commencement and Completion of Improvements.** The Developer agrees, conditioned on the timely review and approval of the Developer’s plans for construction of the Improvements to commence the construction of the Improvements on the Property within sixty (60) days after Closing and to complete such Improvements within sixteen (16) months after Closing; provided, however, that such time periods shall be tolled for any period during which the Developer’s plans for construction of the Improvements or approvals under Article 3.14 shall have been pending for any approval for more than thirty (30) days. During the course of such construction, the Commission or City and its agents and employees will have the right to inspect the Property from time to time and to perform the final inspection to determine whether or not the Improvements have been completed in accordance with the terms hereof. Should market conditions require that additional time be required to complete the activities to be performed under this agreement, the Developer may request in writing that the Commission consider an Agreement extension as provided in Article 1.5 herein above. Term of this Agreement, including extension shall not exceed two (2) years in total. Approval of such extension requests shall not be unreasonably withheld.

**3.14 Conditions Precedent to Closing.** Developer shall cause to be performed or produced to the satisfaction of the City and approved by the Commission prior to the Closing on the Property, the following:

- A. Final site plan and elevations in conformity with the following planning documents:
  - a. Ole Asheboro Redevelopment Plan, Adopted 2004; and
  - b. MLK North Traditional Neighborhood Development Plan, as amended 10/17/18;
- B. Approval of final site plans by the NC State Historic Preservation Office;
- C. Final development program and phasing schedule;
- D. Proposed development budget with sources and uses;
- E. Marketing plan for rental of units;
- F. Drawings, specifications, and other documents fully setting forth details relating to exterior architectural façades and interior layout of all building improvements;
- G. Any other matters pertaining to the proposed construction and improvements contemplated;

- H. Documentation as to the projected costs of the construction of Improvements;
- I. Proof of award of Low Income Housing Tax Credit, specific to this project, from the North Carolina Housing Finance Agency or; Evidence of financial ability, through capital contributions, grants, loans or otherwise, to complete the Improvements in accordance with this Agreement; and
- J. Execution of one or more agreement(s) with the City regarding funding and construction of site preparation, streetscape, and infrastructure improvements for the Property.

**3.15 Other Approvals.** Prior to commencement of construction of the Improvements and in addition to the approval by the Commission of such construction as provided above, the Developer shall further obtain approvals as are reasonably required by the City. Any documentation or matters of any nature submitted for such approvals shall be exactly the same and in complete conformity with all documentation submitted to the Commission for its approval.

**3.16 Tax Credit Applications.** Notwithstanding anything to the contrary set forth in this Agreement, Developer's obligation to consummate the purchase and sale herein contemplated shall be subject to and conditional upon Developer being granted all of an applied for award of low income housing tax credits (the "Tax Credits"), and other related financing, from the North Carolina Housing Finance Agency (the "Housing Finance Agency"). Developer agrees to file a pre-file application for low income housing tax credits with the North Carolina Housing Finance Agency no later than March 31, 2019. In the event that Developer is invited by the Housing Finance Agency to file such an application for any such Tax Credits, Developer may, at its expense, file an application for any such Tax Credits no later than May 31, 2019. In the event that Developer is not invited by the Housing Finance Agency to file such application and Developer gives notice to Seller of such non-invitation by May 31, 2019, Developer shall be deemed to have terminated this Agreement in which event the Deposit shall be refunded to Developer and thereupon this Agreement shall terminate and be of no further force and effect. In the event that Developer is invited to file such application but does not timely file such application by May 31, 2019 Developer shall be deemed to have forfeited the Deposit, and this Agreement shall terminate and be of no further force and effect. In the event that Developer is invited to file such application and Developer timely files an application for such Tax Credits, then Seller shall cooperate with Developer in Developer's efforts to obtain such Tax Credits, and Seller does hereby grant Developer the authority to sign and execute the applications therefor. Seller agrees to complete and deliver to Developer upon request any environmental questionnaires which may be required as a part of Developer's Tax Credit application in a timely manner. Developer shall have no obligation to appeal a negative decision on any such Tax Credits. In the event the application for the Tax Credits is conclusively and finally denied or the application for the Tax Credits is not otherwise approved by October 1, 2019, Developer shall elect, no later than the first to occur of (i) the fifth (5th) day following receipt of written confirmation of such conclusive and final denial, and (ii) October 1, 2019, as applicable, to terminate this Agreement, in which event the Deposit shall be returned to Developer and thereupon this Agreement shall terminate and be of no further force and effect, except for the survival of certain provisions as expressly provided for herein. In the event an appeal shall be denied or in the event a previous denial is affirmed, Developer shall again have the right to make such election. In the event the application for the Tax Credits is conclusively and finally approved by October 1, 2019 or Purchaser has not otherwise elected or been deemed to have elected to terminate this Agreement by October 1, 2019, then (1) this Agreement shall remain in full force and effect, subject to the terms and conditions hereof, and (2) all of the Deposit shall be non-refundable to Developer except in the event of Seller's default under this Agreement or as otherwise expressly set forth herein. If the application for Tax Credits in 2019 is conclusively and finally denied and if Developer does not elect to terminate the Agreement, Developer shall have the right to elect to file a new application for such Tax Credits in 2020, in which case the references above to March 31, 2019, May 31, 2019 and October 1, 2019 shall be deemed to refer to March 31, 2020, May 31, 2020 and October 1, 2020, respectively, and the date of Closing under Article 8.2 shall be extended by twelve (12) months.

## **Article 4      Inspection Period**

**4.1      Inspections and Indemnity.** Ninety (90) days from the Effective Date (the “Inspection Period”), the Developer shall have the right, at its own expense, to enter on the Property and conduct any and all inspections, examinations, surveys and drillings of any nature necessary for the Developer to ascertain and to be satisfied that the Property to be transferred is satisfactory for its intended use, not subject to any matters that are uncorrectable or not acceptable, and to further conduct such tests and engineering inspections as it deems necessary and appropriate for it to proceed with Closing. If the Developer determines that the Property to be transferred to it at Closing under this Agreement is subject to any unsatisfactory condition or is for any reason unsuitable for its purposes, then it shall give the Commission notice of the same prior to the end of the Inspection Period and, if the conditions thereon noted cannot be corrected or remedied to the satisfaction of the Developer prior to Closing, then the same shall be treated as notice of termination of this Agreement, in which case neither party shall have any rights or obligations against the other. The Developer agrees and acknowledges that the Commission nor City shall not be held liable for any injury or damage whatsoever that may arise as a result of the activities, inspections or examinations by the Developer, its agents, employees or persons acting for or on behalf of the Developer occurring on the Property, and the Commission nor City shall not be held liable for any injury or death occurring on the Property, nor for loss, damage, theft or casualty to the Property of whatsoever nature or other loss of any type whatsoever, from any cause occurring on the Property arising out of the Developer’s inspection of the Property related to this Agreement, and the Developer agrees to fully indemnify and hold harmless the Commission and City from and against any and all such claims, causes of action, losses, damages, expenses or liabilities arising from the same, including attorney fees reasonably and actually incurred at regular hourly rates for the defense of such claims.

**4.2      Title Examination; Objections.** The Developer shall at the Developer’s expense have the right to cause a title examination (the “Title Examination”) to be made of the Property before Closing. On or before Closing, the Developer shall notify the Seller in writing of its objections, if any, to any exceptions, legal descriptions or any other matters shown or disclosed as a result of the Title Examination and the Survey, if any, of the Property that will render title unmarketable, constitute violations of law or violations of recorded instruments, materially diminish the market value of the Property, render the Property not suitable for the Developer’s use in its sole discretion, adversely impact access to and from the Property or that are otherwise unacceptable to the Developer in its absolute and sole discretion (collectively the “Disapproved Exceptions”). Failure to notify the Seller shall be deemed approval of all matters that should have been shown by such Title Examination or Survey and any exceptions not objected to shall be deemed to be “Permitted Exceptions” as allowed by the Special Warranty Deed to be executed by the Seller at each Closing to convey and transfer the Property to the Developer. Within ten (10) days after receipt of notice of the Developer’s objections to title, the Seller shall notify the Developer in writing which, if any, of the Disapproved Exceptions (a) the Seller agrees to remove by Closing, (b) the Seller will attempt to remove by Closing or (c) the Seller will neither remove nor attempt to remove. The Seller hereby agrees to remove, satisfy, and discharge any “Monetary Encumbrance,” defined to mean any lien, claim, or encumbrance including deeds of trust, mortgages, liens of judgments, and tax liens that may be satisfied by the payment of the same on, before, or with Closing and such Monetary Encumbrance shall not be a Permitted Exception but shall not constitute a Disapproved Exception. If the Seller does not agree prior to Closing to remove any and all Disapproved Exceptions by Closing, the Developer may either (a) take title subject to the Permitted Exceptions and the Disapproved Exceptions that the Seller has not agreed to remove without change in the terms of this Agreement or (b) cancel this Agreement, in which case neither party shall have any further rights or obligations hereunder. The Developer shall notify the Seller of its election in writing within ten (10) days after receipt of notice from the Seller to the Developer of its actions, if any, as to the Disapproved Exceptions. In the event the Developer notifies the Seller of any Disapproved Exceptions, then the date of Closing shall be extended for a period not to exceed thirty (30) days from the date of Closing



as hereinafter defined to allow the Developer and the Seller the time to resolve any and all issues pertaining to the Disapproved Exceptions as provided herein.

## **Article 5        Warranties/Duties/Responsibilities of the Commission**

**5.1        Organization and Powers.** The Commission represents and warrants that (a) the Commission is a duly organized, validly existing municipal corporation organized under the laws of the State of North Carolina for the purposes of acting within its jurisdiction of the City of Greensboro for the purposes of carrying out urban renewal and community development all as set forth under the North Carolina General Statutes Chapter 160A; (b) the Commission has all necessary power and authority under North Carolina law to own its assets and properties and to carry on its activities as now conducted by it; (c) this Agreement has been duly entered into and is the legally binding obligation of the Commission, provided that this Agreement is subsequently approved by the City Council; and (d) this Agreement will not violate any judgment, law, consent decree or agreement to which the Commission is a party or is subject to and will not violate any law or ordinance under which the Commission is organized.

**5.2        The Commission's Agent's Authority.** Except as otherwise required by law or regulation, the Commission may designate an officer to act on its behalf for the purposes of issuing to the Developer all necessary approvals for such minor modifications or verifications as the same may arise from time to time.

**5.3        Environmental.** The Commission warrants and represents that it has not itself caused the release, disposal or storage of any hazardous or toxic waste or substances, all as presently defined or listed within any local, state or federal laws or regulations, upon or on the A4 Property.

**5.4        Warranty of Title.** The Commission hereby warrants, represents, and covenants to the Developer that it has done nothing to impair such title as Commission received, that title to the A4 Property is free and clear of all liens and encumbrances, except any Monetary Encumbrances that the Commission warrants will be removed or released upon or prior to the conveyance or transfer of the A4 Property, and is subject further to rights-of-way and utility easements of record.

**5.5        Federal Requirements.** The Commission shall be responsible for compliance with all federal statutes, rules, and regulations which may be applicable to the contemplated development of the Property except to the extent that responsibility for such compliance is specifically assigned to the City or the Developer hereunder. The Commission will advise Developer of the actions that must be taken, in the opinion of Commission, to comply with requirements as soon as practicable, and in no event later than sixty (60) days of the effective date hereof, which are applicable to the Developer, and will assist Developer in meeting such requirements. Developer will cooperate with the Commission in meeting the federal requirements for which the Commission is responsible during the term of this Agreement. Federal requirements include those imposed by use of Community Development Block Grant Funds.

**5.6        In General.** The Commission shall promptly review any matter submitted and advise the Developer of approval or of why approval is being withheld and what steps or changes are required to obtain the Commission's approval. The Commission's approval or disapproval of any matter required hereunder shall be solely determined in the discretion of the Commission so long as such action is not arbitrary or capricious.

The Commission shall either approve or disapprove as promptly as practicable. If a submission or any portion thereof is disapproved, the Commission shall give specific reasons for disapproval and suggested modifications, and the Developer shall, within a reasonable time thereafter, resubmit the material

in question with such responsive revisions as the Developer may propose. The Commission shall then expeditiously review and act upon the new or corrected deliverable. The provisions of this section relating to time periods for approval, rejection, or resubmission of new or corrected deliverables shall continue to apply until the deliverables have been approved by the Commission or until this Agreement is terminated.

**5.7 Specific Activities Performed by Commission.** Commission shall cause to be performed in a timely manner prior to closing on the Property, the following:

- A. Recombination of the A4 Property (526 Douglas St., 528 Douglas St., and 532 Douglas St.) into a single parcel totaling to approximately 1.12 acres bound to east by the right-of-way of Pearson St, bound to the north by the right-of-way of Douglas St. The anticipated recombined parcel is shown on **Exhibit B**.
- B. Assist with negotiations with the City to provide funding for site preparation.

**5.8 Information.** The Commission shall provide or cause to be provided to Developer all information relating to the ownership and status of the Property and other relevant materials in its possession as expeditiously as possible to facilitate the Developer's performance of its obligations under this Agreement.

**5.9 Access to Land.** The Commission shall provide the Developer, its respective agents, employees, and consultants reasonable access to the Property. All such access shall be at the sole risk of the party entering the Property and no invasive or destructive testing will be done on such without the prior approval of the Commission.

**5.10 Inspection by Commission.** The Commission reserves the right to enter upon the Property, and/or any portion thereof, for the purposes of inspecting the state thereof, the status of any development activities thereon, and for other proper purposes. All such entries shall be made at the Commission's sole risk and shall be done in such a manner as to not unreasonably interfere with any construction, operation, or other activities thereon being undertaken by or on behalf of the Developer.

**5.11 Maintenance of the Property.** Until such time as portions of the Property are transferred or conveyed to the Developer, the Commission shall maintain such portions of the Property not transferred or conveyed in a clean, safe, and sanitary condition and in compliance with applicable law. From and after the time at which any portion of the Property is conveyed to the Developer, the same will be responsible for maintenance of that portion of the Property.

**5.12 Access to Records.** The Commission shall grant access and the right to copy to all reports, data, information, studies, and other materials pertaining or relating to the Property that are in its possession or are reasonably available to it without unreasonable cost or effort to the Developer, its contractors, and agents. The Commission will make no representations or warranties as to the content or work product contained in such materials. Such access will include the right to copy those materials at no cost to the Commission.

**5.13 Payment of Certain Costs.** The Commission will be responsible for the payment of only those costs or expenses expressly stated and specified in this Agreement.

**5.14 Certificate of Completion.** The Commission shall issue a "Certificate of Completion" upon the satisfactory completion of all the Improvements, as described in the final development program and phasing schedule required in Section 3.14. To determine whether or not a Certificate of Completion

shall be executed, the Commission reserves the right to conduct such inspections or investigations with respect to such parcel of the Property and any improvements thereon during all reasonable business hours.

**5.15 Delivery of Documents.** Within one (1) month after the Effective Date of this Agreement, the Commission shall provide to the Developer copies of all surveys, environmental reports, title policies, and any other plans or documents within its possession pertaining to the title and condition of the Property.

## **Article 6 Warranties/Duties/Responsibilities of the City**

**6.1 Organization and Powers.** (a) The City has all necessary power and authority under North Carolina law to own its assets and properties and to carry on its activities as now conducted by it, (b) subject to upset bid process and the approval of the City Council, this Agreement has been duly entered into and is the legally binding obligation of the City, and (c) this Agreement will not violate any judgment, law, consent decree or agreement to which the City is a party or is subject to and will not violate any law or ordinance under which the City is organized.

**6.2 Environmental.** The City warrants and represents that it has not itself caused the release, disposal or storage of any hazardous or toxic waste or substances, all as presently defined or listed within any local, state or federal laws or regulations, upon or on the A3 Property.

**6.3 Warranty of Title.** The City hereby warrants, represents, and covenants to the Developer that it has done nothing to impair such title as City received, that title to the A3 Property is free and clear of all liens and encumbrances, except any Monetary Encumbrances that the Commission warrants will be removed or released upon or prior to the conveyance or transfer of the A3 Property, and is subject further to rights-of-way and utility easements of record.

**6.4 Federal Requirements.** The City shall be responsible for compliance with all federal statutes, rules, and regulations which may be applicable to the contemplated development of the Property except to the extent that responsibility for such compliance is specifically assigned to the City or the Developer hereunder. The City will advise Developer of the actions that must be taken, in the opinion of City, to comply with requirements as soon as practicable, and in no event later than sixty (60) days of the effective date hereof, which are applicable to the Developer, and will assist Developer in meeting such requirements. Developer will cooperate with the City in meeting the federal requirements for which the City is responsible during the term of this Agreement. Federal requirements include those imposed by use of Community Development Block Grant Funds.

**6.5 In General.** The City shall promptly review any matter submitted and advise the Developer of approval or of why approval is being withheld and what steps or changes are required to obtain the City or a City agent's approval. The City's approval or disapproval of any matter required hereunder shall be solely determined in the discretion of the City so long as such action is not arbitrary or capricious.

**6.6 Specific Activities Performed by City.** City shall cause to be performed in a timely manner prior to Closing on the Property to Developer the following:

- A. Recombination of parcels associated with the A3 Property totaling to approximately 1.68 acres bound to east by the right-of-way of Pearson St, bound to the south by the right-of-way of Douglas St., to the north by the right-of-way of Bragg St. The anticipated recombined parcel is shown on **Exhibit B**.

**6.7 Information.** The City shall provide or cause to be provided to Developer all information relating to the ownership and status of the Property and other relevant materials in its possession as expeditiously as possible to facilitate the Developer's performance of its obligations under this Agreement.

**6.8 Access to Land.** The City shall provide the Developer, its respective agents, employees, and consultants reasonable access to the Property. All such access shall be at the sole risk of the party entering the Property and no invasive or destructive testing will be done on such without the prior approval of the City.

**6.9 Inspection by City.** The City reserves the right to enter upon the Property, and/or any portion thereof, for the purposes of inspecting the state thereof, the status of any development activities thereon, and for other proper purposes. All such entries shall be made at the City's sole risk and shall be done in such a manner as to not unreasonably interfere with any construction, operation, or other activities thereon being undertaken by or on behalf of the Developer.

**6.10 Access to Records.** The City shall grant access and the right to copy to all reports, data, information, studies, and other materials pertaining or relating to the Property that are in its possession or are reasonably available to it without unreasonable cost or effort to the Developer, its contractors, and agents. The City will make no representations or warranties as to the content or work product contained in such materials. Such access will include the right to copy those materials at no cost to the City.

**6.11 Payment of Certain Costs.** The City will be responsible for the payment of only those costs or expenses expressly stated and specified in this Agreement.

**6.12 Delivery of Documents.** Within one (1) month after the Effective Date of this Agreement, the City shall provide to the Developer copies of all surveys, environmental reports, title policies, and any other plans or documents within its possession pertaining to the title and condition of the Property.

## **Article 7. Insurance.**

The Developer, during the term of this Agreement, shall maintain or cause to be maintained all of the hereinafter specified insurance:

- A. Workers Compensation and Occupational Disease Insurance required by the State of North Carolina.
- B. Commercial Liability Insurance (Primary and Umbrella): Commercial Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate for bodily injury, personal injury, and property damage liability. In addition, Developer shall obtain umbrella coverage of \$5,000,000. Coverage extensions shall include the following: subcontractors, cross liability, broad form property damage, environmental liability, and blanket contractual liability. The Commission and City are to be named as an additional insured on a primary non-contributory basis for any liability arising directly or indirectly for the services contemplated by this Agreement.
- C. Automobile Liability Insurance (Primary and Umbrella): When any motor vehicles (owned, leased, or hired) are used in connection with the work to be performed, the Developer shall provide Comprehensive Automobile Liability Insurance with limits of not less than \$1,000,000 combined single limit for bodily injury and property damage. The Commission and City are to be named as an additional insured on a primary non-contributory basis.

- D. **Property Insurance:** If the Developer maintains an office on property owned by the Commission or City, the Developer shall purchase and maintain insurance for its own property utilized at the work to full insurable value thereof. Insurance shall be taken out in a company authorized to do business in the State of North Carolina and reasonably satisfactory to the City and Commission and shall insure against perils of fire and shall include all risk insurance for physical loss or damage including without duplication, theft, vandalism, and malicious mischief. Insurance shall include coverage of owned and rented equipment, temporary facilities, and other items. If insurance is written with stipulated amounts deductible under the terms of the policy, the Developer shall be responsible for covering the cost of all deductibles.
- E. **Builders Risk/Property Insurance:** The Developer shall maintain property insurance upon the improvements at the Property in the amount of the full replacement cost thereof. This insurance shall include the interests of the City, Commission, Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee; be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the improvements, temporary buildings, falsework, and materials and equipment in transit; and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, and water damage (other than that caused by flood).
- F. **Flood Insurance:** To the extent that property is located in a designated flood hazard area, the Developer shall maintain or cause to be maintained Flood Insurance in such amount as is available, but only to the extent that such coverage is available.
- G. **Other Requirements:** The Developer shall require all contractors to carry the insurance required herein, as appropriate, or the Developer may provide the coverage for any or all contractors and, if so, the evidence of insurance submitted shall so stipulate. All such contracts of insurance held by or on behalf of subcontractors shall name the Commission and City as additional insureds. The Developer shall furnish, or cause to be furnished, to the Commission original Certificates of Insurance evidencing the required coverage to be in force from time to time. The receipt of any Certificate does not constitute a determination by the Commission or City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the Certificate are in compliance with all Agreement requirements. Non-fulfillment of the insurance provisions shall, after failing to cure within sixty (60) days, constitute a breach of this Agreement. All insurance required under this Article shall provide for thirty (30) days prior written notice to be given to the City and Commission in the event coverage is substantially changed, canceled, or non-renewed.

## **Article 8. Purchase Price, Closing, and Conveyance of Property.**

**8.1 Purchase Price.** The Purchase Price for the Property is Four Hundred Thousand Dollars (\$400,000) (the "Purchase Price").

Developer shall deposit with the City Clerk, the sum of Twenty Thousand Dollars (\$20,000) (the "Deposit") as a deposit toward the Purchase Price pursuant to North Carolina General Statute §160A-269.

Provided Developer is the winning bidder, the Developer shall pay to Seller in cash or other acceptable funds at Closing the remainder of the Purchase Price for the transfer, conveyance, and sale of the Parcels identified in Article 1.2 as necessary for build out of the Improvements on the “A-3” and “A-4” Property within the Ole Asheboro Redevelopment Area.

**8.2 Closing.** At Closing, the Seller will deliver to the Developer Special Warranty Deed in recordable form conveying the Property to the Developer and subject to the matters contained herein that are intended to bind future owners of the Property as described herein.

Subject to Article 3, the Closing shall occur within the latter of (a) sixteen (16) months after the Effective Date or (b) sixty (60) days following the satisfaction of the conditions in Article 3.14, and shall occur at a place and time mutually agreed upon by the Developer and the Commission.

Notwithstanding the foregoing, the Developer shall have the right to extend the date of Closing for up to two (2) periods of thirty (30) days each by giving written notice of such election to Seller at least three (3) days prior to the then scheduled Closing.

**8.3 Costs of Closing and Proration.** Each of the Commission, the City, and the Developer shall bear all of its own costs regarding the conveyance and transfer, including inspections, examinations, legal fees, recording fees, surveys and other costs, except as said costs, expenses, or fees are otherwise allocated or agreed, or are the responsibility of one of the parties as set forth in this Agreement. The Developer shall pay the cost of recording the Special Warranty Deed.

**8.4 Conditions Precedent to Right to Close on Property.** This Agreement is contingent upon favorable recommendation by the Commission and approval by the City.

Closing on the purchase of the Property by Developer shall be conditioned upon the satisfaction of the duties and responsibilities of Developer to be performed by Developer as provided hereby this Agreement.

Upon the conveyance of the Property to the Developer, and the recording of the deed in the Office of the Register of Deeds of Guilford County, NC, upon the request of any of the parties, the parties shall also record a Memorandum of this Agreement in a mutually satisfactory form. In the event of any inconsistency between the terms of this Agreement and such Memorandum, the terms and conditions of this Agreement shall control.

## **Article 9. Breach.**

The occurrence of any of the following events shall constitute a Breach under the terms of this Agreement:

**9.1 Failure to Comply.** If the Developer is not in substantial compliance with its obligations under this Agreement, and if the Developer fails to make a diligent effort to remedy such default within a period of thirty (30) days after written notice thereof from the Seller specifying the respects in which it is at fault so that the Developer is again in substantial compliance with such obligations, the Seller may, at the end of such period, terminate this Agreement by giving written notice to the Developer of such termination.

**9.2 Default under Agreement.** Subject to any express notice and grace period provided in this Agreement during which the Developer shall have the right to cure any default or event which with the passage of time would become a default, the Developer’s breach of any covenant, warranty, or default under or failure to perform under the terms of this Agreement.

**9.3 Inaccurate Representations.** The Developer providing invalid or inaccurate material with regard to any warranty, representation or opinion of the Developer in this Agreement is a default under this Agreement. Additionally, providing inaccurate or incomplete contracts or schedules is a default. Notwithstanding the foregoing, before such action or omission shall be deemed a default hereunder, the Commission or City shall give Developer notice of the material it deems inaccurate or invalid and Developer shall have thirty (30) days to provide additional information to rectify the inaccuracy.

**9.4 Easements or Encroachments on Survey.** The appearance on any survey furnished hereunder of easements or encroachments which did not exist at the time that the Commission and City acquired the Property, were not created by the Commission nor City, and which have occurred without the written approval of the Commission or City and which are not corrected (in the sole judgment of the Commission) or removed within ninety (90) business days after written notice thereof by the Commission or City to the Developer.

**9.5 Claim of Lien.** Any act or default by the Developer that gives rise to a valid claim of lien against the Property, which lien the Developer fails to have bonded off in accordance with statute or otherwise removed from the Property within sixty (60) days after receipt of notice of the lien by the Developer. In lieu of bonding off such lien, if applicable, the Developer may take any and all steps that it deems appropriate to contest the validity of the lien or claim provided that such proceedings cause the lien to be removed from the Lot during the pendency of the proceedings to resolve such claim or lien.

**9.6 Governmental Regulations.** Failure of the Developer to comply with all governmental regulations as appropriate and federal programs to the extent applicable to Developer as provided in Section 5.5 and 6.4.

**9.7 Developer's Failure to Close.** In the event that the Developer fails to close on the purchase of the Property as provided herein, or fails to comply with any conditions precedent to Closing contained in this Agreement, then after the notice and cure periods provided in Section 9.1, the Commission and the City shall have the right to declare this Agreement terminated and to pursue any other remedies available to it.

**9.8 Nonspeculative.** The Developer represents and hereby agrees that the purchase of the Property is for the purpose of redevelopment of the Property and not for speculation or land holding. The Developer acknowledges and agrees that this Agreement is not assignable after Closing and that the Property will not be transferred, conveyed, sold, or leased prior to completion of the Improvements on the Property and issuance of the Certificate of Completion of Improvements for same.

In the event of the occurrence of any Breach and following any applicable grace period, if any, the Commission or City shall have all remedies as may be provided by law or by this Agreement. In such circumstances, the Commission or City, respectively, may complete the land development in any manner determined by the Commission and City to be appropriate and in the best interests of the overall Ole Asheboro community. Nothing herein shall be deemed to allow for recovery of consequential damages or loss profits.

**9.9 Breaches by Commission.** In the event there is any breach or default by the Commission of any of the terms and provisions of this Agreement, all of which terms and provisions are hereby determined to be material, and the same shall not be cured within thirty (30) days after written demand by the Developer to the Commission (or if the breach or default be one that cannot be cured within thirty (30) days, the Commission shall have commenced the cure within thirty (30) days after written demand by the Developer and shall have completed the cure within ninety (90) days after written demand by the

Developer), then the Developer may enforce its rights by any legal or equitable remedy available to it, including an action for specific performance.

**9.10 Breaches by City.** In the event there is any breach or default by the City of any of the terms and provisions of this Agreement, all of which terms and provisions are hereby determined to be material, and the same shall not be cured within thirty (30) days after written demand by the Developer to the City (or if the breach or default be one that cannot be cured within thirty (30) days, the City shall have commenced the cure within thirty (30) days after written demand by the Developer and shall have completed the cure within ninety (90) days after written demand by the Developer), then the Developer may enforce its rights by any legal or equitable remedy available to it, including an action for specific performance.

**9.11 Expense and Cost.** In the event of any breach by either party of the terms or conditions of this Agreement, or the deed conveying the Property to the Developer, the breaching party shall pay all expenses and costs, including court costs and attorney's fees, incurred by the non-breaching party incident to enforcement of its rights under this Agreement.

**9.12 Deposit; Liquidated Damages.** Except as otherwise provided herein, in the event of a termination of this Agreement or a failure to close the purchase of the Property for any reason other than a Breach by the Developer, the Deposit shall be refunded to the Developer. In the event of a termination of this Agreement or a failure to close the purchase of the Property due to a Breach by the Developer, the Seller shall retain the Deposit as liquidated damages and as its sole remedy. The Developer and the Seller acknowledge that it would be extremely impracticable and difficult to ascertain the actual damages that would be suffered by Seller if the Developer fails to consummate the purchase and sale of the Property herein (for any reason other than Seller's failure, refusal or inability to perform any of Seller's covenants and agreements hereunder). The Developer and the Seller have considered carefully the loss to Seller as a consequence of the negotiation and execution of this Agreement; and the personal expenses of Seller incurred in connection with the preparation of this Agreement and Seller's performance hereunder; and the other damages, general and special, that Developer and Seller realize and recognize Seller will sustain, but that Seller cannot at this time calculate with absolute certainty. Based on all those considerations, Developer and Seller have agreed that the damage to Seller would reasonably be expected to amount to the Deposit.

## **Article 10. General Conditions.**

The following terms and conditions shall be applicable throughout the term of this Agreement:

**10.1 Assignment.** The Developer shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the Commission or City. The Commission may assign its interest to the City at the Commission's discretion. Notwithstanding the foregoing, the Developer shall have the right to assign its rights and obligations to this Agreement prior to Closing without the consent of the other parties to (i) an entity that is wholly owned by Developer or (ii) Oakleigh Senior I, LP, a Georgia limited partnership whose sole general partner is Oakleigh Senior I GP, LLC, a Georgia limited liability company, and which is wholly owned by the principals of Developer. Developer shall give the Commission and the City written notice prior to any such assignment.

**10.2 No Waiver.** No waiver of any event of default or breach by the Developer hereunder shall be implied from any delay or omission by the Commission or the City to take action on account of such default, and no express waiver shall affect any default other than the default specified in the waiver. Waivers of any covenant, term or condition contained herein must be in writing.



**10.3 Governing Law.** This Agreement and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of North Carolina except to the extent that such laws may be preempted by any law, regulation or rule of the United States or any agency thereof.

**10.4 Severability.** Invalidation of any one or more of the provisions of this Agreement shall in no way affect any of the other provisions thereof, which shall remain in full force and effect.

**10.5 Captions.** The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision hereof.

**10.6 Notices.** Any notice, demand, or other communication required, permitted or authorized by this Agreement or under applicable law shall be in writing and shall be considered given or delivered if it is delivered personally to, or dispatched by regular or certified mail, postage prepaid, to acknowledged representatives of the parties to this Agreement.

**10.7 Audit.** The Commission, the City, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the City which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions for seven years from the final payment under this Agreement.

**10.8 Timeliness of Work.** It is expressly understood that the timely commencement and completion of the construction of the Improvements on the Property are of the essence of this Agreement, that the time allowance for said construction of the Improvements takes into consideration all causes for delays within the control of the Developer, whether foreseen or unforeseen at the time of the execution of this Agreement, but excluding Acts of God or other force majeure. It is further agreed that during the time of such construction, the Commission or City and its agents and employees shall have the right to check the progress of the work and it shall not be considered completed until approval of the same by final inspection by the Commission or City.

**10.9 Changes to Improvements.** Any Improvements to the Property other than those specified in this Agreement and previously approved by the Commission or City shall also require approvals as provided in Article 3, which approvals shall not be unreasonably withheld provided such Improvements do not foreseeably impact the construction of the Improvements planned and otherwise required under this Agreement. Any such approved Improvements shall not alter or affect the time of commencement or completion of the Improvements as heretofore provided in this Agreement.

**10.10 Conflicts of Interest of Employees, Agents, Contractors, Officers, or Elected or Appointed Officials of the City of Greensboro or Any Designated Public Agency, or Subrecipients.**

In addition to conflict of interest requirements in OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, no person:

- A. Who is an employee, an agent, a contractor, an officer, or elected or appointed official of the City or any designated public agency, or sub-recipients and;
- B. Who exercises or has exercised any function or responsibilities with respect to assisted activities; or

- C. Who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or contract with respect thereto, or the proceeds there under, either for him or herself or for those with whom he or she has family or thereafter. An exception may be granted to this exclusion as provided in 24 CFR 570.611(d).

Any possible conflicts that arise subsequently shall be presented to the City as soon as one is known by the Developer.

**10.12 Nonliability of Commission or City.** No member, official, commissioner or employee of the Commission or City shall be monetarily liable to the Developer, nor to any successor in interest to the Developer, in the event of any default or breach by the Commission under the terms of this Agreement and the Developer's sole remedy shall be in equity for the specific performance of this Agreement.

**10.13 Indemnification.** The Developer does hereby agree to indemnify and save harmless the Commission, the City, their officers, agents and employees, against all claims, actions, lawsuits and demands, including reasonable attorney fees, made by anyone for any damages, losses or injuries of any kind, including environmental, which may arise from the sole negligence of the Developer, its agents or employees, or as a result of work performed pursuant to this contract.

**10.14 Iran Divestment Act Certification.** As of the date of this Agreement, the Developer certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58 and that the Developer will not utilize any contractor or subcontractor found on the State Treasurer's Final Divestment List. All individuals signing this Agreement on behalf of the Developer certify that they are authorized by the Developer to make this certification.

**10.15 E-Verify.** The Developer certifies that it currently complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and that at all times during the term of this Contract, it will continue to comply with these requirements. The Developer also certifies that it will require that all of its subcontractors that perform any work pursuant to this Agreement to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Violation of this section shall be deemed a material breach of this Agreement.

**10.16 Deed Does Not Impair Contract.** Any deed transferring title to the Property from the Commission or the City to the Developer or any successor in interest shall not be deemed to impair the provisions and covenants of this Agreement, which shall survive Closing and transfer of title and not be merged therein.

**10.17 Broker.** The Developer, the Commission, and the City warrant and represent, one to the other, that there are no brokers involved or that have any rights to commissions, fees or proceeds of any nature arising out of this transaction.

**10.18 Statutory Authorization.** Any sale, transfer and disposition of the Property is subject to and conditioned on the approval of the Commission pursuant to North Carolina General Statutes §160A-514 and 160A-269 and of the City Council of the City of Greensboro.

**10.19 Independence of Parties.** This Agreement is not intended to create and shall not create a principal and agency relationship, partnership or joint venture between the parties, and neither party is made the agent or representative of the other for any purpose or in any manner whatsoever.

**10.20 Notice and Demand.** Any notice or demand under this Agreement by either party to the other shall be deemed given upon proof of mailing by registered or certified mail, postage prepaid, return receipt requested as follows:

To the Developer, addressed to:

Prestwick Land Holdings, LLC  
Attn: Jody Tucker  
3715 Northside Parkway NW, Bldg. 200, Ste. 175  
Atlanta, Georgia 30327  
Fax: 404.949.3871  
Email: [jody@prestwickcompanies.com](mailto:jody@prestwickcompanies.com)

With copy to:

Arnall Golden Gregory LLP  
Attn: David B. McAlister, Esq.  
171 17<sup>th</sup> Street NW, Suite 2100  
Atlanta, Georgia 30363  
Fax: 404.873.8719  
Email: [david.mcalister@agg.com](mailto:david.mcalister@agg.com)

To the Redevelopment Commission, addressed to:

Redevelopment Commission of Greensboro  
Attn: Assistant Secretary  
Post Office Box 3136  
Greensboro, N.C. 27402-3136  
Fax: 336.412.6315  
Email: [dyan.arkin@greensboro-nc.gov](mailto:dyan.arkin@greensboro-nc.gov)

With copy to:

Redevelopment Commission of Greensboro  
Attn: Redevelopment Commission Attorney  
Post Office Box 3136  
Greensboro, N.C. 27402-3136  
Fax: 336.412.6315  
Email: [andrew.kelly@greensboro-nc.gov](mailto:andrew.kelly@greensboro-nc.gov)

To the City, addressed to:

City of Greensboro  
Attn: City Manager  
P.O. Box 3136  
Greensboro, N.C. 27402

With copy to:

City of Greensboro  
Attn: City Attorney  
P.O. Box 3136  
Greensboro, N.C. 27402

**10.21 Binding Agreement.** This Agreement shall be binding upon the parties to this Agreement, their members (if applicable), heirs, executors, administrators, successors and assigns; the provisions hereof shall survive Closing and the execution and delivery of all documents of transfer or other instruments required to be prepared to effectuate the terms of this Agreement; this Agreement contains the entire Agreement between the parties hereto and they shall not be bound by any terms, conditions, statements, warranty representations, whether oral or written not herein contained; and that any amendment to this Agreement shall not be effective or binding upon the parties unless in writing and signed by the parties to be bound thereto.

**10.22 HOME/HUD Provisions.** Notwithstanding any provision of this Agreement to the contrary, if U.S. Department of Housing and Urban Development ("HUD") funds are used to acquire the Property, including, but not limited to, HOME funds, the parties hereto acknowledge and agree that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds

or approval may occur only upon satisfactory completion of an environmental review and receipt of a release of funds notice from the U.S. Dept. of HUD under 24 CFR Part 58. The parties further agree that the provision of any federal funds in connection with the acquisition of the Property is conditioned upon the determination to proceed with, modify or cancel such provision based upon the results of a subsequent environmental review. If no HUD funds are utilized with respect to the acquisition of the Property, this provision shall be considered null and void.

**10.23 Voluntary Sale.** Developer and Seller hereby acknowledge and agree as follows: (1) Developer does not have the right of eminent domain; (2) because this is a voluntary transaction, Developer will not be able to acquire the Property offered for sale if negotiations fail to result in an amicable agreement; (3) Developer estimates the fair market value of the Property to be the Purchase Price; (4) even though Federal funds may be used in the acquisition of the Property, Seller WILL NOT be entitled to any relocation benefits; and (5) if applicable, any tenant legally occupying the Property is eligible to receive relocation assistance and benefits as identified in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

[Remainder of this page intentionally left blank / Signature Pages to Follow]

IN WITNESS WHEREOF, the Commission, the City, and the Developer have caused this Agreement to be executed under seal all by authority duly given.

**Redevelopment Commission of Greensboro**

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

\_\_\_\_\_, Chair

ATTEST:

\_\_\_\_\_  
Assistant Secretary

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

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

**Prestwick Land Holdings, LLC**

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

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

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

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

[Separate City Signature Page to Follow]